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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S4 15 Cr. 867 RMB

5 MEHMET HAKAN ATILLA,

6 Defendant.

7 -----x

8  
9 December 20, 2017  
10 8:20 a.m.

11  
12 Before:

13 HON. RICHARD M. BERMAN,

14 District Judge  
15 and a jury

16  
17 APPEARANCES

18 JOON H. KIM,  
19 United States Attorney for the  
20 Southern District of New York  
21 MICHAEL DENNIS LOCKARD,  
22 SIDHARDHA KAMARAJU,  
23 DAVID WILLIAM DENTON, JR.,  
24 DEAN CONSTANTINE SOVOLOS,  
25 Assistant United States Attorneys

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(APPEARANCES Continued)

HERRICK, FEINSTEIN LLP (NYC)  
Attorneys for defendant Atilla  
BY: VICTOR J. ROCCO, Esq.  
THOMAS ELLIOTT THORNHILL, Esq.  
- and -

FLEMING RUVOLDT, PLLC  
BY: CATHY ANN FLEMING, Esq.  
ROBERT J. FETTWEIS, Esq.  
- and -

McDERMOTT, WILL & EMERY  
BY: TODD HARRISON, Esq.

- and -  
LAW OFFICES OF JOSHUA L. DRATEL, P.C.  
BY: JOSHUA LEWIS DRATEL, Esq.  
Of counsel

Also Present:

JENNIFER McREYNOLDS, Special Agent FBI  
MICHAEL CHANG-FRIEDEN, Paralegal Specialist USAO  
MS. ASIYE KAY, Turkish Interpreter  
MS. SEYHAN SIRTALAN, Turkish Interpreter

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1 (Trial resumed)

2 (In open court; jury not present)

3 MS. FLEMING: Judge we've also reached an agreement on  
4 how to do the indictment thing if it's okay with you, how to  
5 send the indictment back, just send the charging party  
6 indictment back instead of the whole front part.

7 THE COURT: Good.

8 MR. DENTON: So we're working on a redacted indictment  
9 that's just the charging language.

10 THE COURT: Okay.

11 MR. DENTON: And then we'll bring that up.

12 MS. FLEMING: We gave Christine just the bribery.

13 THE COURT: All right. I'm going to go back down,  
14 then, because you obviously have to read this. This draft  
15 incorporates what we talked about yesterday. It does entail  
16 the bribery and all that stuff, and you may as well just call  
17 it a redacted -- not redacted, but a copy of the indictment.  
18 If it's still a copy of the indictment, just leave the  
19 language.

20 MR. DENTON: I think you can just refer to a copy of  
21 the legal charges in the indictment.

22 THE COURT: Fine, something like that. I have some  
23 edits, taking some underlining out. That's an editorial for me  
24 to read but not for them.

25 MS. FLEMING: Okay.

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1 THE COURT: Yes and some other thing. Let's put some  
2 things on the record, then.

3 MS. FLEMING: Sure, whatever you'd like.

4 THE COURT: So we'll get that out of the way.

5 MS. FLEMING: We will waive Mr. Atilla's presence on  
6 the record.

7 THE COURT: Okay. So I guess it's my inadvertence. I  
8 didn't send you a copy of the updated charges reflecting what  
9 we discussed yesterday, but we are preparing copies now, and  
10 you can take a look at that. We'll push back the conference  
11 until you're able to do that.

12 There is a motion for a mistrial in writing from the  
13 defense based on one of the questions that Mr. Denton asked  
14 yesterday of Mr. Atilla. That was, I believe, the subject of  
15 an interim ruling at sidebar. I'm not sure, but in any event,  
16 what we really do need is to have the government respond in  
17 writing, since it's an application for a mistrial. So I did  
18 endorse the defense letter asking the government to respond by  
19 5:00 p.m. today.

20 MR. DENTON: We'll do that, your Honor. We'll see if  
21 we can do it even a little sooner.

22 MS. FLEMING: Judge, can I tell you why? Because in  
23 the absence of a mistrial, we really think that at least the  
24 Court needs to give a curative instruction on what happened  
25 with that question.

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1 THE COURT: Well, I'll entertain a proposal --

2 MS. FLEMING: Okay.

3 THE COURT: -- as to what I would say. Okay. And  
4 you'll see if the government agrees with that.

5 I think I ruled on the record with respect to the  
6 so-called jailhouse tapes yesterday.

7 MS. FLEMING: I don't think so.

8 THE COURT: Did I not?

9 MS. FLEMING: No, you did it in the back.

10 THE COURT: So anyway, I was going to say it probably  
11 is appropriate for me to do a written ruling, and I'm in the  
12 process of having one of the clerks draft something. So that's  
13 two.

14 I did speak to juror No. 10 yesterday, as we  
15 discussed, and I excused him. And that's the juror, you'll  
16 recall, that during voir dire said he had a trip coming in  
17 January and I guess I -- I think we discussed it. I can't  
18 remember if we did, but....

19 MR. ROCCO: We did.

20 THE COURT: Assured him, so to speak, that his trip  
21 would not be interrupted. Since it's already Wednesday, nobody  
22 knows how long deliberations would go, if they began and didn't  
23 get it completed by Friday, his trip would be in jeopardy, and  
24 it would be a big mess; so we excused him.

25 Then, a couple of hours later, I got a call from a

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1 another juror, who is sick. So I got a voicemail actually  
2 about 8:00 or 9:00 last night from that juror, and we didn't  
3 get back to him. This morning he called chambers, and I took  
4 the call. I was there at the time, around 7:00, and he said  
5 it's that juror. He hadn't heard back, and my intention was  
6 somebody would call him and say he would have to have a  
7 doctor's note or have to be sick, et cetera, et cetera.

8 He said he had 103 fever and the flu and a doctor's  
9 note. He said he had a very good experience here, and I'm not  
10 joking, he sincerely said that it was a wonderful experience,  
11 and he really regretted that he couldn't come. And I said,  
12 well, don't come, obviously, if you're sick. So we're down  
13 another juror. I think we have one or two to spare, maybe one.  
14 So anyway, that's where things stand. I hope you will confirm  
15 I did the right thing with the sick juror.

16 MS. FLEMING: Absolutely.

17 MR. DENTON: Yes, your Honor.

18 MR. HARRISON: Judge, which juror was it, do you know?

19 THE COURT: I think it was juror No. 11, in the 11th  
20 seat. He called himself juror No. 13, but I think those  
21 numbers have changed, and I think he's the fellow who was  
22 sitting next to the juror that is going on the trip. I'm  
23 tempted to say something funny, but I usually --

24 MR. ROCCO: Regret it?

25 THE COURT: I usually regret it; so I won't, and it

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1 may not even be funny. So, okay.

2 So you tell me when you'd be ready. Look through the  
3 charges.

4 There is one other thing, which I don't know if it's  
5 going to be possible to happen, but very early yesterday  
6 morning, it turns out, before trial, a very dear friend of mine  
7 passed away. So there is a memorial service today at 1:00,  
8 which I'm toying with whether I could go or not and then come  
9 back.

10 So I think, realistically, I'd be out of the office  
11 from 11:30 to, the latest I think would be 3:30. So, first, I  
12 want to see if it would be okay with you. What we would do in  
13 the interim is, I would, first of all, tell the jury I'll be  
14 out, and they should go about their deliberation business, but  
15 that I personally wouldn't be here for that period of time.  
16 They should do what they would normally do, and if we get any  
17 notes, Christine would text them to me or e-mail them to me.  
18 And in the worst case, we wouldn't be able to act on the notes  
19 unless we could figure out a way that -- you know, who knows  
20 what the note might say.

21 Then, as a backup, I thought I would ask if one of --  
22 I don't think it would be necessary -- one of my colleagues to,  
23 you know, if there was some sort of emergency that required a  
24 judge, to be here or something as a result of one of the notes  
25 or whatever, if that's okay with you.

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1           So there's a couple of pieces to that, seeking your  
2       okay. I'm not sure I'm going to do it. The way I would do it  
3       is I would get a car, an Uber, or something like that, and have  
4       them wait for me at the funeral home.

5           MR. ROCCO: Can we take a moment to talk about that,  
6       your Honor?

7           THE COURT: Sure.

8           (Pause)

9           Incidentally, I should add one more thing. Don't feel  
10      obliged to say yes. No, no, just because you think I'm asking.  
11      If you think in any way it could disadvantage Mr. Atilla, then  
12      I wouldn't do it. So only if you're comfortable, from his  
13      point of view, would that be okay.

14          MS. FLEMING: Judge, we all think you should go. What  
15      we're debating is we don't think you ought to tell the jury  
16      you're not going to be here. In the event there is no note, no  
17      harm, no foul. If there is a note, we can just deal with it,  
18      and if we have to delay something until you get back, we delay  
19      it.

20          MR. ROCCO: If there's an emergency, I have no problem  
21      having a colleague cover it.

22          THE COURT: Okay. Sometimes they send nervous if they  
23      send a note and then they send another note and say, where's  
24      the answer to our note.

25          MR. DENTON: I think for that reason it's probaly



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1 better, actually, to tell them that the Court will not be  
2 available to respond to notes for that time period.

3 THE COURT: No?

4 MS. FLEMING: I don't think they should know you're  
5 not going to be here. If there's a note, we'll deal with it or  
6 you'll deal with it with them. You're still going to be  
7 dealing with the note. I don't want them to feel the pressure  
8 of they shouldn't be sending anything out for three or four  
9 hours.

10 THE COURT: Okay. I understand that.

11 MR. DENTON: I'll just say, I think the more common  
12 situation that this arises is with judges who observe lunch  
13 breaks scrupulously, and tell the jury that, you know, from  
14 1:00 to 2:00 you should feel free to give any notes you have to  
15 the marshal, but you should be aware but the parties will not  
16 be available and the Court will not be available to respond to  
17 them until 2:00.

18 This is just a slightly longer version of that, and so  
19 I don't think there's any reason to tell them don't send out  
20 notes, but I think informing them that the Court and the  
21 parties will not be able to address them seems reasonable so  
22 that they're not wondering what is going on.

23 THE COURT: Okay. Well, I'll think about it.

24 MS. FLEMING: The reason I just don't like that,  
25 Judge, is I don't want to discourage them from sending a note.

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1 THE COURT: I see your point.

2 MR. HARRISON: Just the other thing, Judge, is they  
3 could conceivably, during that time, send out a note that we  
4 could deal, with even though your Honor is not physically here.  
5 If they say we would like to see exhibit whatever, we could get  
6 on the phone with you, if necessary, and agree that we can send  
7 the exhibit in or whatever so things could still get done. And  
8 that's a common type of note to get during the early hours.

9 THE COURT: Okay. So you probably should run that by  
10 Mr. Atilla, too.

11 MS. FLEMING: Yes, we will.

12 THE COURT: Okay. So, yes, that's it. You'll let me  
13 know when you're ready to talk about the charges.

14 (Pause)

15 THE COURT: Did you get copies yet?

16 MS. FLEMING: We have one set, Judge.

17 MR. ROCCO: One.

18 THE COURT: I'll give you each two.

19 MR. ROCCO: Thank you, Judge.

20 MR. DENTON: Thank you, Judge.

21 (Pause)

22 THE COURT: Do you mind going into the robing room  
23 because there's press and audience outside.

24 MR. ROCCO: Sure.

25 MS. FLEMING: Do you want us to review it first and

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1 then go in?

2 THE COURT: I'm going to go downstairs; so you can be  
3 there. Actually, I suppose you could stay here. We'll just  
4 keep them out.

5 MS. FLEMING: Okay.

6 THE COURT: You should know that these are live. I  
7 didn't realize.

8 MS. FLEMING: So I can't yell at Mr. Rocco?

9 (Pause)

10 THE COURT: Are you guys all set?

11 MR. ROCCO: Just a little bit, your Honor.

12 THE COURT: Okay. I think the only changes in there  
13 are the ones we agreed to yesterday.

14 (Pause)

15 (In open court; jury not present)

16 THE COURT: Please be seated. So as is my practice,  
17 we had the balance of the jury charge conference in the robing  
18 room without a stenographer, and it is also my practice to  
19 allow the parties to indicate for the record, with the  
20 stenographer, any objections that they have remaining to the  
21 jury instructions that I'm about to read to the jury. So we'll  
22 start with the defense, and you may state any objections that  
23 you have.

24 Before you do, Mr. Rocco, I indicated to the parties  
25 off the record and now on the record, I don't know if it was on

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1 the record before, that there has been an application for a  
2 mistrial, and I endorsed the defense application today and  
3 asked for a government written response by 5:00 p.m. today.

4 No. 2, I told the parties that there would be a  
5 written decision today or tomorrow, certainly whenever there's  
6 time, no later than tomorrow, with respect to the jailhouse  
7 conversations of Mr. Zarrab.

8 And with that, Mr. Rocco, if there are no objections,  
9 that means that the parties agreed with the instructions, with  
10 the exception of those that they may have objections to.

11 MR. ROCCO: Thank you, your Honor. So on page 46 --  
12 these are lengthy; so I will read them slowly -- at the bottom  
13 of the page --

14 THE COURT: You have to speak into the microphone, I  
15 think.

16 MR. ROCCO: At the bottom of the page, on page 46, we  
17 object to the language at the end of the first full paragraph  
18 on the page and ask that the last sentence of that paragraph,  
19 starting "In addition" -- the sentence starting "In addition"  
20 should be stricken, and the sentence that should be stricken  
21 reads: "In addition, during the relevant time period, the  
22 sanctions allowed penalties against foreign financial  
23 institutions with bank accounts in the United States if those  
24 foreign financial institutions violated certain rules on  
25 assisting transactions with or for the benefit of Iran."

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1 On --

2 THE COURT: May I make this suggestion? Without  
3 waiving any rights, would you be comfortable just reading the  
4 language that you think should be in, instead of saying "on  
5 page" or do you want to do it page by page?

6 MR. ROCCO: It's easier for me to do it that way.

7 THE COURT: Okay.

8 MR. ROCCO: Because that's how I noted it.

9 THE COURT: Okay. No problem.

10 MR. ROCCO: I'll do it as quickly as I can.

11 THE COURT: No problem.

12 MR. ROCCO: On the next page, page 47, after the  
13 enumerated -- the paragraph starting "Third," we would like to  
14 add a paragraph denominated "fourth," saying: "Fourth, that  
15 the activity for which the defendant is charged had some  
16 connection to the United States either by involving a United  
17 States person in the conduct or by causing goods, services or  
18 technology to be exported or re-exported from the United States  
19 as part of the defendant's scheme. In other words, the  
20 violative conduct has to go through the United States. A  
21 United States correspondent account not connected to the  
22 conduct at issue is not enough."

23 And at the end of the next paragraph, starting, "as I  
24 have mentioned," adding a full sentence saying: "Conspiring to  
25 do activity that is merely sanctionable is not a crime."

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1           On page 48, at the end of the first full paragraph,  
2           add this sentence: "If you find Mr. Atilla did not know the  
3           transactions were sent through the U.S., then you must acquit  
4           him on the charge of conspiring to export U.S. services to Iran  
5           or to the government of Iran."

6           On page 49, at the end of the first full paragraph,  
7           starting "Second," add the sentence: "Mere statements that  
8           fail to disclose sanctionable activity are not sufficient to  
9           convict because they are not transactions within the meaning of  
10          the evasion avoidance regulation."

11          And the sentence starting the third paragraph on the  
12          page: "Beginning on July 31, 2012," the word "required" should  
13          be changed to "permitted."

14          On the following page, at the end of the paragraph --  
15          I'm sorry, at the end of the runover paragraph, following the  
16          words "the government of Iran," adding the sentence: "Two  
17          things to keep in mind: First, the activity I just described  
18          could only get a person sanctioned, not convicted of a crime;  
19          and second, if the purchaser or acquirer was a private Iranian  
20          individual or company, it would not be sanctionable."

21          At the end of the next paragraph, add the following  
22          sentence: "The conduct I have just described would have, at  
23          most, led to the financial institution being sanctioned, not  
24          convicted of a crime, and if the conduct was conducted with the  
25          proceeds of sales of natural gas by Iran, it would not have

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1     been sanctionable."

2             At the end of the next paragraph, which starts  
3     "beginning on July 1st, 2013," at the end of that paragraph add  
4     the language: "In this period, if the foreign financial  
5     institution facilitated the payment for the sale of gold before  
6     July 31st, 2013, it would not have been sanctionable or  
7     prosecutable, even if the shipment of gold occurred after  
8     July 1, 2013."

9             And following that, striking the language starting  
10    with "Fourth" through the first runover paragraph onto page 51,  
11    and that's it, your Honor. Thank you for your patience.

12            THE COURT: Very well. Anybody else from the defense?

13            MR. HARRISON: Just one second, please, your Honor.

14            (Pause)

15            Judge, just for the record, it's already in the  
16    record, but we do object to the conscious avoidance charge.

17            THE COURT: Yes. How about the government?

18            MR. DENTON: The government requests that the Court  
19    retain the so-called Pinkerton instruction originally included  
20    in the instructions at pages 29 to 31 distributed this morning.  
21    Obviously, the Court's instruction is a correct statement of  
22    the applicable law. We think it's particularly appropriate in  
23    this case, where it is an entirely appropriate conclusion for  
24    the jury to reach that bank fraud and money laundering, as  
25    substantive offenses, were the reasonably foreseeable acts in

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1 co-conspirators in furtherance of the charged conspiracies,  
2 both to obstruct the enforcement of the sanctions laws and to  
3 violate the IEEPA.

4 THE COURT: So in the conference that we had, I agreed  
5 with the defense to delete that instruction. Among other  
6 reasons, I thought it was very complicated for jurors or any of  
7 us to grasp, and I just thought it would cause more confusion  
8 than not.

9 I take it the government is opposed to the changes  
10 suggested by Mr. Harrison and Mr. Rocco?

11 MR. DENTON: Yes, your Honor. We believe the  
12 conscious avoidance instruction is appropriate, and that the  
13 Court's instructions on IEEPA is an accurate statement of the  
14 law.

15 THE COURT: Is the defense in disagreement with the  
16 removal of the so-called Pinkerton charge?

17 MR. ROCCO: We agree with the removal of the Pinkerton  
18 charge.

19 THE COURT: You agree with the removal.

20 MR. ROCCO: Yes.

21 THE COURT: So I think that's it. We worked fast, but  
22 not that fast. So we're retyping the corrections to the  
23 instructions, and when that's ready, we'll call in the jury.

24 MS. FLEMING: There were still just two issues that we  
25 had to discuss, one was the one we discussed before that you



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1 asked us to discuss with the client. He's fine with it. He  
2 has no issues.

3 THE COURT: Okay. Great.

4 MS. FLEMING: And the second was that we had requested  
5 a curative instruction. We don't think it cures the issue that  
6 was before the jury, and we would move for a mistrial. We  
7 can't agree on the language.

8 THE COURT: Was that in your motion?

9 MS. FLEMING: No. We don't think it cures it, but if  
10 the Court is considering doing a curative instruction, it's the  
11 last clear chance.

12 THE COURT: Did you discuss that with the government?

13 MS. FLEMING: We showed what we would propose as  
14 language.

15 THE COURT: Hold on one second. So did you agree  
16 with --

17 MR. DENTON: Your Honor, there's one sentence in the  
18 proposed instruction that we disagree with.

19 I'll also note that, I think, that given that early in  
20 the Court's charge you instruct them that questions are not  
21 evidence and that, in particular, any question that was  
22 objected to or stricken should not be considered, that a  
23 separate instruction is not necessary.

24 THE COURT: Right. So, why don't you take a look at  
25 her language and see if there is consensus. I think that it's

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1 hard to say without seeing the written opposition to the  
2 motion. As a gut reaction, gut-level reaction, one question  
3 asked and not answered and objected to and the objection  
4 granted and directed the question be stricken from the record,  
5 in my experience, certainly is adequate, along with what I say  
6 in these instructions generally. But if you both can agree on  
7 something, we have a couple of minutes. Since we don't have  
8 the instructions done yet, I'd be happy to consider it.

9 MR. HARRISON: Judge, I just had a couple more  
10 quick --

11 THE COURT: One second.

12 (Pause)

13 MR. ROCCO: Your Honor, so we spent a minute talking  
14 about the proposed curative instruction. We discussed it  
15 before we had our conference on the charge. We cannot agree.  
16 I can give you what our proposed language is.

17 THE COURT: I'll take a look, but I think I'm going to  
18 rely on -- well, first, I'm going to see the opposition, but as  
19 I said before, one question that hasn't been answered and that  
20 was directed be stricken from the record, I can't imagine --  
21 there may be some question that could give rise to a mistrial  
22 but certainly not that one, in my opinion.

23 MR. ROCCO: Well, that's the issue we addressed in the  
24 letter, and we understand that, your Honor.

25 THE COURT: Right.

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1 MR. ROCCO: But we think the question was a peculiar  
2 question, and that's why we raised it to the Court.

3 THE COURT: Okay. I'll hear you. I'll take what you  
4 have.

5 MR. ROCCO: We didn't write it out for your Honor, or  
6 I can give you by hand. You're a wise man, Judge. We'll write  
7 it out. Thank you.

8 THE COURT: That's it. Store is closed.

9 MR. HARRISON: Judge?

10 THE COURT: Store is closed, Mr. Harrison.

11 MR. HARRISON: I just wanted to put on the record a  
12 couple of objections that we discussed, just quick ones that we  
13 discussed, for the record.

14 THE COURT: Okay.

15 MR. HARRISON: On page 16 of the current draft, we had  
16 requested that the second sentence on the "Foreign Evidence  
17 Admitted" section be struck.

18 On page 42, defense had requested that in the run-on  
19 sentence at the top of page 42, that either the words  
20 "improper" or "unlawful" be inserted before "purpose."

21 And then on page 52, we had asked that the first full  
22 sentence be stricken, the sentence that starts "The defendant  
23 does not have to know" because it's our understanding that,  
24 under IEEPA, the defendant does have to know that it's  
25 unlawful.

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1 THE COURT: Okay. Thanks a lot. So give me a couple  
2 of minutes, and we'll see what we can do.

3 (Recess)

4 THE COURT: We're going to call in the jury now.

5 (Jury present)

6 THE COURT: Great. Please be seated, everybody. As I  
7 mentioned to you yesterday, and as I'm about to give the jury  
8 instructions, I am going to give a complete set to each of you  
9 to take into the jury room at the conclusion of this portion of  
10 the trial.

11 So, ladies and gentlemen of the jury, you've now heard  
12 all of the evidence in the case, as well as the final arguments  
13 of the lawyers for the parties.

14 My duty at this point is to instruct you as to the  
15 law. It is your duty to accept these instructions of law and  
16 apply them to the facts as you determine them, just as it has  
17 been my duty to preside over the trial and decide what  
18 testimony and what evidence is relevant under the law for your  
19 consideration.

20 On these legal matters, you must take the law as I  
21 give it to you. If any attorney has stated a legal principle  
22 different from any that I state in my instructions, it is my  
23 instructions that you must follow.

24 You should not single out any instruction as alone  
25 stating the law, but you should consider my instructions as a

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1 whole when you retire to deliberate in the jury room. As I  
2 mentioned, you will receive a copy of these instructions  
3 verbatim, along with a verdict sheet to be filled out by the  
4 jury to take with you into the jury room. Your decision, or  
5 your verdict, must be unanimous.

6 You should not, any of you, be concerned about the  
7 wisdom of any rule that I state, regardless of any opinion that  
8 you may have as to what the law may be or ought to be. It  
9 would violate your sworn duty to base a verdict upon any other  
10 view of the law than the one I give you.

11 Your role, as I've said before, is to consider and  
12 decide the fact issues in this case. You, the members of the  
13 jury, are the sole and exclusive determiners of the facts. You  
14 pass upon the evidence. You determine the credibility or  
15 believability of the witnesses. You resolve whatever conflicts  
16 may exist in the testimony. You draw whatever reasonable  
17 inferences and conclusions you decide to draw from the facts as  
18 you have determined them, and you determine the weight of the  
19 evidence.

20 In determining the facts, you must rely upon your own  
21 independent recollection of the evidence. What the lawyers  
22 have said in their opening statements, in their closing  
23 arguments, in their objections, or in their questions is not  
24 evidence. Nor is anything I may have said during the trial or  
25 may say during these instructions about a fact issue, to be

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1 taken instead of your own independent recollection.

2 What I say is not evidence. In this connection,  
3 remember that a question put to a witness is never evidence.  
4 Only the answer is evidence. But you may not consider any  
5 answer as to which I sustained an objection or that I directed  
6 you to disregard or that I directed be struck from the record.

7 If there is any difference or contradiction between  
8 what any lawyer has said in their arguments to you and what you  
9 decide the evidence showed, or between anything I may have said  
10 and what you decide the evidence showed, it is your view of the  
11 evidence, not the lawyers' and not mine, that controls.

12 I also ask you to draw no inference from the fact that  
13 upon occasion I may have asked questions of certain witnesses.  
14 These questions were intended only for clarification or to move  
15 things along, and certainly were not intended to suggest any  
16 opinions on my part as to the verdict you should render or  
17 whether any of the witnesses may have been more credible than  
18 any of the other witnesses. It is important that you  
19 understand that I wish to convey no opinion as to the verdict  
20 you should render in this case and that if you, nevertheless,  
21 believe that I did convey an opinion, you should not, in any  
22 way, follow it.

23 In determining the facts, you must weigh and consider  
24 the evidence without regard to sympathy, prejudice or passion  
25 for or against any party, and without regard to what the

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1 reaction of the parties or the public to your verdict may be.  
2 I will later discuss with you how to pass upon the credibility  
3 of witnesses.

4 I remind you that the indictment in this case is not  
5 evidence. It merely describes the charges made against the  
6 defendant. It is a set of accusations. It may not be  
7 considered by you as evidence of the guilt of the defendant.  
8 Only the evidence, or lack of evidence, decides that issue.

9 A copy of the statutory allegations in the indictment  
10 will be furnished to you when you begin your deliberations. In  
11 summary, the counts set forth in the indictment allege as  
12 follows:

13 Count One charges that from at least in or about 2010,  
14 up to and including in or about 2015, the defendant,  
15 Mr. Atilla, participated in a conspiracy to defraud the United  
16 States. It is alleged that the defendant agreed with others to  
17 impair, impede and obstruct the lawful and legitimate  
18 governmental functions and operations of the United States  
19 Department of the Treasury, in violation of what's called Title  
20 18, United States Code, Section 371.

21 That's a summary. These are each going to be  
22 summaries of the counts set forth in the indictment.

23 Count Two charges that, from at least in or about  
24 2010, up to and including in or about 2015, the defendant  
25 participated in a conspiracy to violate a license, order,

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1 regulation or prohibition issued pursuant to the International  
2 Emergency Economic Powers Act, referred to in this trial as  
3 IEEPA, I-E-E-P-A.

4 Count Three charges, in summary, that from at least in  
5 or about 2010, up to and including in or about 2015, the  
6 defendant engaged in the substantive offense of bank fraud.

7 I'm going to explain the difference between a  
8 substantive offense and conspiracy offenses in a couple of  
9 minutes.

10 Count Four charges that, from at least in or about  
11 2010, up to and including in or about 2015, the defendant  
12 participated in a conspiracy to commit bank fraud.

13 Count Five charges that, from at least in or about  
14 2010, up to and including in or about 2015, the defendant  
15 engaged in the substantive count of money laundering.

16 Count Six charges that, from at least in or about  
17 2010, up to and including 2015, the defendant participated in  
18 the conspiracy to commit money laundering. Six counts.

19 The evidence from which you are to decide what the  
20 facts are in this case consists of, first, the sworn testimony  
21 of witnesses on both direct and cross-examination; two, the  
22 documents and exhibits that were received in evidence; and  
23 three, any stipulations of testimony. Nothing else is  
24 evidence.

25 You should draw no inference or conclusion, for or



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1 against, any party by reason of lawyers making objections or my  
2 rulings on such objections. Counsel have not only the right  
3 but the duty to make legal objections when they think that such  
4 objections are appropriate. You should not be swayed for or  
5 against either side simply because counsel for any party has  
6 chosen to make an objection. Nor should you be swayed by any  
7 ruling I made on an objection. Whether or not I may have  
8 sustained more objections for one side or the other has no  
9 bearing on your function to consider all of the evidence that  
10 was admitted.

11 Further, do not concern yourself with what was said at  
12 sidebar conferences or during my discussions with counsel. Nor  
13 does it make any difference whether any lawyer or I asked for a  
14 sidebar conference. Those discussions related to rulings of  
15 law and not to matters of fact.

16 At times, I may have admonished a lawyer or a witness  
17 or directed a witness to be responsive to questions or to keep  
18 his or her voice up. At times, I may have questioned a witness  
19 myself or made comments to a lawyer. Any questions that I  
20 asked or instructions or comments that I gave were intended  
21 only to move things along or to clarify the presentation of  
22 evidence and to bring out something which I thought was  
23 unclear.

24 You should draw no inference or conclusion of any  
25 kind, favorable or unfavorable, with respect to any witness or

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1 any party in the case by reason of any comment, any question or  
2 any instruction of mine. Nor should you infer that I have any  
3 views as to the credibility of any witness, as to the weight of  
4 the evidence, or as to how you should decide any issue that is  
5 before you. That is entirely your role.

6 The defendant has pleaded not guilty to the charges in  
7 the indictment. As a result of his plea of not guilty, the  
8 burden is upon the prosecution, which is to say the government,  
9 to prove the defendant's guilt beyond a reasonable doubt. This  
10 burden never shifts to the defendant for the simple reason that  
11 the law never imposes upon a defendant in a criminal case the  
12 burden or duty of testifying himself or calling any witnesses  
13 or of locating or producing any evidence.

14 The law presumes the defendant to be innocent of the  
15 charges against him. I, therefore, instruct you that the  
16 defendant is to be presumed by you to be innocent when the  
17 trial began and throughout your deliberations and until such  
18 time, if it comes, that you, as a jury, are unanimously  
19 satisfied that the government has proved him guilty beyond a  
20 reasonable doubt.

21 The presumption of innocence alone is sufficient to  
22 acquit the defendant unless you, as jurors, are unanimously  
23 convinced beyond a reasonable doubt of his guilt, after a  
24 careful and impartial consideration of all of the evidence in  
25 this case. If the government fails to sustain its burden as to

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1 the defendant, you must find the defendant not guilty.

2 I have said that the government must prove the  
3 defendant guilty beyond a reasonable doubt, and the question  
4 naturally is: What is reasonable doubt? The words almost  
5 define themselves. It is a doubt based upon reason and common  
6 sense. It is a doubt that a reasonable person has after  
7 carefully weighing all of the evidence. It is a doubt which  
8 would cause a reasonable person to hesitate to act in a matter  
9 of importance in his or her own life.

10 Proof beyond a reasonable doubt must, therefore, be  
11 proof of such a convincing character that a reasonable person  
12 would not hesitate to rely and act upon it in the most  
13 important of his or her own affairs. A reasonable doubt is not  
14 a caprice or a whim. It is not a speculation or a suspicion.  
15 It is not an excuse to avoid the performance of an unpleasant  
16 duty, and it is not sympathy.

17 In a criminal case, the burden is, at all times, upon  
18 the government to prove guilt beyond a reasonable doubt. The  
19 law does not require the government to prove guilt beyond all  
20 possible doubt. Proof beyond a reasonable doubt is sufficient  
21 to convict. The burden never shifts to the defendant, which  
22 means that it is always the government's burden to prove each  
23 of the elements of the crimes charged beyond a reasonable  
24 doubt.

25 If, after fair and impartial consideration of all of

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1 the evidence, you have a reasonable doubt, it is your duty to  
2 acquit the defendant. On the other hand, if, after a fair and  
3 impartial consideration of all of the evidence, you are  
4 satisfied of the defendant's guilt beyond a reasonable doubt,  
5 you should vote to convict.

6 You have had the opportunity to observe all the  
7 witnesses, including the expert witnesses, and it is now your  
8 job to decide how believable each witness was in his or her own  
9 testimony. You are the sole determiners of the credibility of  
10 each witness and of the importance of witness testimony.

11 So how do you determine where the truth lies? You  
12 should use all the tests for truthfulness that you would use in  
13 determining matters of importance to you in your everyday  
14 lives. You should consider any bias or hostility that a  
15 witness may have shown for or against any party, as well as any  
16 interest the witness has in the outcome of the case. It is  
17 your duty to consider whether the witness has permitted any  
18 such bias or interest to color his or her testimony.

19 You should consider the opportunity that the witness  
20 had to see, hear, and know the things about which they  
21 testified, the accuracy of their memory, their candor or lack  
22 of candor, their intelligence, their reasonableness and  
23 probability of their testimony, and its consistency, or lack of  
24 consistency, and its corroboration, or lack of corroboration,  
25 with other believable testimony.

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1           You watched the witnesses testify. Everything a  
2 witness said or did on the witness stand counts in your  
3 determination. How did the witness appear? What was the  
4 witness' demeanor while testifying? Often, it is not what  
5 people say, but how they say it that moves us.

6           In deciding whether to believe a witness, keep in mind  
7 that people sometimes forget things. You need to consider,  
8 therefore, whether in such a situation the witness' testimony  
9 reflects an innocent lapse of memory or an intentional  
10 falsehood, and that may depend on whether it has to do with an  
11 important fact or with only a small detail. It is not the  
12 number of witnesses called in a case but, rather, their  
13 credibility when called to the witness stand that is directly  
14 at issue.

15           In addition, the fact that a witness may be employed  
16 as a law enforcement official does not mean that his or her  
17 testimony is deserving of more or less consideration, or a  
18 greater or lesser weight, than that of an ordinary witness.

19           If you find that any witness has willfully testified  
20 falsely as to a material fact, that is to say an important  
21 matter, the law permits you to disregard completely the entire  
22 testimony of that witness upon the principle that one who  
23 testifies falsely about one material fact, is likely to testify  
24 falsely about everything.

25           You are not required, however, to consider such a

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1 witness as totally unworthy of belief. You may accept so much  
2 of the witness' testimony as you deem true and disregard what  
3 you feel is false. As the sole judges of the facts, you must  
4 decide which of the witnesses you will believe, what portion of  
5 their testimony you accept and what weight you will give to it.

6 You've heard from the government witness, Reza Zarrab,  
7 who testified that he actually committed crimes in the past,  
8 including the crimes charged in the indictment in this case.

9 The government argues, as it is permitted to do, that  
10 it must take its witnesses as it finds them. It argues that  
11 frequently only people who themselves take part in criminal  
12 activity have the knowledge required to show criminal behavior  
13 by others.

14 For those very reasons, the law allows the use of  
15 testimony by people who have committed crimes. Indeed, it is  
16 the law in federal courts that such testimony may be enough, in  
17 and of itself, for a conviction, if the jury finds that the  
18 testimony establishes guilt of the defendant beyond a  
19 reasonable doubt.

20 However, it is also the case that such testimony is of  
21 such a nature that it must be scrutinized with great care and  
22 viewed with particular caution when you decide how much of the  
23 testimony to believe.

24 I've given you some general instructions on  
25 credibility, and I will not repeat them all here. However, let

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1 me say a few things to consider during your deliberations on  
2 the subject of testimony from a cooperating witness.

3 You should ask yourselves whether the witness would  
4 benefit more by lying or by telling the truth. Was the  
5 witness' testimony made up in any way because the witness  
6 believed or hoped that he would somehow receive favorable  
7 treatment by testifying falsely? Or did the witness believe  
8 his interests would best be served by testifying truthfully?  
9 If you believe that the witness was motivated by hopes of  
10 personal gain, was the motivation one that would cause him to  
11 lie, or was it one that would cause him to tell the truth? Did  
12 these motivations color the witness' testimony?

13 You should look at all of the evidence in deciding  
14 what credence and what weight, if any, you want to give to the  
15 witness' testimony.

16 Also, you heard testimony about an agreement between  
17 the government and the cooperating witness. I must caution you  
18 that it is of no concern of yours why the government made an  
19 agreement with the witness. Your sole concern is whether a  
20 witness has given truthful testimony, in part or in whole, here  
21 in this courtroom before you.

22 There has been evidence introduced at trial that the  
23 government used, and that was Mr. Huseyin Korkmaz, as a  
24 confidential source in this case. I instruct you that there is  
25 nothing improper in the government's use of confidential

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1 sources and, indeed, certain criminal conduct never would be  
2 detected without the use of such confidential sources.

3 You, therefore, should not concern yourself with how  
4 you personally feel about the use of confidential sources  
5 because that is really beside the point. Put another way, your  
6 concern is to decide whether the government has proved the  
7 guilt of the defendant beyond a reasonable doubt, regardless of  
8 whether the evidence was obtained by the use of confidential  
9 sources.

10 On the other hand, where confidential sources testify,  
11 as happened here, the testimony must be examined with greater  
12 scrutiny than the testimony of an ordinary witness. You should  
13 consider whether the confidential source received any benefits  
14 or promises from the government which would motivate them to  
15 testify falsely against the defendant. For example, they may  
16 believe that they will only continue to receive these benefits  
17 if they produce evidence of criminal conduct.

18 If you decide to accept their testimony, after  
19 considering it in the light of all the evidence in the case,  
20 then you may give it whatever weight, if any, you find it  
21 deserves.

22 You've also heard testimony from what we call expert  
23 witnesses. They included Lisa Palluconi, she testified as to  
24 Iran sanctions, as an Iran sanctions program as an expert;  
25 also, Mark Dubowitz testified about Iran and Iranian sanctions



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1 as an expert; Anush Djahanbani, D-j-a-h-a-n-b-a-n-i, testified  
2 as a foreign language expert, the language was Farsi; and  
3 Bulent Bulut, B-u-l-u-t, also a foreign language expert  
4 testified about Turkish language.

5 An expert is allowed to express his or her opinion on  
6 matters about which he or she has specialized knowledge or  
7 training. Expert testimony is presented to you on the theory  
8 that someone who is experience in the field can assist you in  
9 understanding the evidence or in reaching an independent  
10 decision on the facts.

11 In weighing the expert's testimony, you may consider  
12 the expert's qualifications, his or her opinions, his or her  
13 reasons for testifying, as well as all of the other  
14 considerations that ordinarily apply when you are deciding  
15 whether to believe a witness' testimony.

16 You may give expert testimony whatever weight, if any,  
17 you find it deserves in light of all of the evidence in this  
18 case. You should not, however, accept this witness testimony,  
19 the expert witness' testimony, merely because he or she is an  
20 expert. Nor should you substitute it for your own reason,  
21 judgment and common sense. The determination of the facts in  
22 this case rests solely with you, the jurors.

23 There are two kinds of evidence; one is called direct  
24 and the other circumstantial. Direct evidence is direct proof  
25 of a fact, such as testimony by a witness about what that

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1 witness personally experienced through his or her own senses,  
2 which is to say something seen, felt, touched, heard or tasted.  
3 Direct evidence may also be in the form of an exhibit, where  
4 the fact to be proven is its present existence or condition.

5 Circumstantial evidence is evidence which tends to  
6 prove a disputed fact by proof of other facts. There's the  
7 simple example of circumstantial evidence which I use, and  
8 others do also, other judges do, as well, and it goes something  
9 like this.

10 Assume that when you came into the courthouse this  
11 morning, the sun was shining and it was a nice day. Assume  
12 that the courtroom blinds were drawn, as they are, and you  
13 could not look outside. But assume further that, as you are  
14 sitting here, someone walks into the courtroom with an umbrella  
15 that is dripping wet, and then a few minutes later another  
16 person also were to enter the courtroom, let's assume, with a  
17 wet umbrella. Now, you cannot look outside the courtroom on  
18 the facts that I gave you because the blinds are drawn, and so  
19 you cannot see whether or not it's raining for yourselves. So  
20 you have no direct evidence of that fact. But on the  
21 combination of facts which I suggested to you and asked you to  
22 assume, it would be reasonable for you to conclude that it had  
23 been raining.

24 That is all there is to circumstantial evidence. You  
25 infer on the basis of reason and experience and common sense

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1 from one established fact the existence or non-existence of  
2 some other fact.

3 The matter of drawing inferences from facts in  
4 evidence is not a matter of guesswork or speculation. An  
5 inference is a logical, factual conclusion which you might  
6 reasonably draw from other facts that have been proved.

7 Circumstantial evidence is of no less value than  
8 direct evidence, and the law makes no distinction between  
9 direct evidence and circumstantial evidence, but simply  
10 requires that your verdict must be based on all the evidence  
11 presented.

12 You have heard testimony about evidence that was  
13 recovered as a result of a foreign, in this case Turkish,  
14 investigation. This evidence was properly admitted into this  
15 case and may be properly considered by you. Whether you  
16 approve or disapprove of how it was obtained should not enter  
17 into your deliberations because I now instruct you that the use  
18 of this evidence is entirely lawful. However, it is up to you,  
19 the jurors, to decide the weight, if any, to be provided by any  
20 foreign evidence.

21 We have, among the exhibits received in evidence, some  
22 documents that are redacted. Redacted means that part of the  
23 document or recording was taken out, and you are to concern  
24 yourself only with the part of the item that has been admitted  
25 into evidence. You should not consider any possible reasons

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1 why the other part of it has been deleted.

2 The defendant is, as reflected in the summary of  
3 counts that I mentioned earlier, charged in what are referred  
4 to as two substantive counts, and substantive counts are  
5 contrasted with what are called conspiracy counts, and they are  
6 as follows:

7 The two substantive counts are found in Count Three,  
8 which charges the defendant with the substantive offense of  
9 bank fraud, and Count Five, which charges the defendant with  
10 the substantive offense of money laundering.

11 For purposes of ease of your understanding of these  
12 instructions, as will become hopefully clear, I'm starting with  
13 the substantive counts and then following with the conspiracy  
14 counts. So there are two substantive counts and then four  
15 conspiracy counts, and I'll deal with them in that order. It's  
16 a little bit different order than is set forth in the  
17 indictment.

18 Although, as you've heard, this is not the order in  
19 which the counts are presented in the indictment, the ordering  
20 of the counts is of no legal significance in these  
21 instructions. So starting with the two substantive counts, and  
22 this is true of all of the counts, they are somewhat detailed;  
23 so bear with me.

24 Bank fraud, that's found in Count Three of the  
25 indictment. It's the substantive count. Count Three charges

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1 that from, at least in or about 2010, up to and including in or  
2 about 2015, the defendant executed and attempted to execute a  
3 scheme to defraud one or more United States financial  
4 institutions and, in particular, HSBC Bank U.S.A., Deutsche  
5 Bank Trust Company Americas, UBS Bank U.S.A., BNY Mellon,  
6 Citibank, JP Morgan Chase Bank, Bank of America and Wells Fargo  
7 Bank.

8 The defendant, as noted, is also charged with a  
9 separate count of conspiracy to commit bank fraud, and you  
10 should bear in mind that the law relating to bank fraud  
11 discussed here will also apply with regard to the conspiracy to  
12 commit bank fraud that is charged against the defendant, as  
13 will be explained when I discuss that alleged conspiracy.

14 (Continued on next page)

15  
16  
17  
18  
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20  
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23  
24  
25

HCK3ATI2

Jury Charge

1           THE COURT: So that in fact is why I put the  
2 substantive counts first, because they, in two instances of the  
3 two counts, they also come up in conspiracies later on. So  
4 what I explain in connection with the substantive counts will  
5 also apply with the conspiracy that relates to those two  
6 counts.

7           So here are the elements of bank fraud. To meet its  
8 burden of proof with respect to bank fraud, the government must  
9 prove beyond a reasonable doubt three essential elements which  
10 I'll explain to you in some detail.

11           The first element of bank fraud is this: The first  
12 element that the government has to prove beyond a reasonable  
13 doubt is that the defendant executed or attempted to execute a  
14 scheme or artifice to defraud a bank, and here the banks again  
15 are HSBC Bank U.S.A., Deutsche Bank Trust Company of the  
16 Americas, UBS Bank U.S.A., BNY Mellon, Citibank, JPMorgan Chase  
17 Bank, Bank of America, and Wells Fargo Bank, or, this is in the  
18 alternative, (2) that he executed or attempted to execute a  
19 scheme or artifice to obtain money owned by or under the  
20 custody and control of one or more of such banks, by means of  
21 false or fraudulent pretenses, representations or promises that  
22 were material to the scheme.

23           So let me say that again so you can follow it perhaps  
24 a little more easily.

25           The first element that the government must prove

HCK3ATI2

Jury Charge

1 beyond a reasonable doubt is that the defendant (1) executed or  
2 attempted to execute a scheme or artifice to defraud a bank,  
3 the banks that I listed before, or (2) that he executed or  
4 attempted to execute a scheme or artifice to obtain money owned  
5 by or under the custody and control of one or more of such  
6 banks by means of false or fraudulent pretenses,  
7 representations or promises that were material to the scheme.

8 Before I define these terms for you, let me explain  
9 that the government needs to prove either of these two  
10 alternatives, one or two, that there existed a scheme or  
11 artifice to defraud a bank, or that there was a scheme or  
12 artifice to obtain money, funds, credits or asset under the  
13 custody or control of that bank by means of fraudulent  
14 pretenses, representations or promises. These two concepts are  
15 not necessarily mutually exclusive. If you find that either  
16 one of the schemes or artifices or both existed, then the first  
17 element of bank fraud is satisfied. However, you must be  
18 unanimous in your view as to the type of scheme or artifice  
19 that existed.

20 Let me explain these terms. A "scheme or artifice" is  
21 simply a plan, device or a course of conduct to accomplish an  
22 objective.

23 A "scheme to defraud a bank" is a pattern or course of  
24 conduct designed to deceive a bank into releasing money or  
25 property. It is a term that embraces all possible means --

HCK3ATI2

## Jury Charge

1     however ingenious, clever or crafty -- by which a person seeks  
2     to gain some improper advantage. For example, a scheme to  
3     defraud can be accomplished through trickery, deceit,  
4     deception, or swindle. It includes intentional  
5     misrepresentation and false suggestion, suppression or  
6     concealment of the truth.

7             The second of the two types of schemes mentioned  
8     includes one to obtain a bank's money by means of a false or  
9     fraudulent pretense, representations or promises. The  
10    government must show that these false or fraudulent pretenses,  
11    representations or promises were directed at the bank with the  
12    intention of deceiving it. The misrepresentations may be  
13    written, oral, or arise from a course of conduct intended to  
14    communicate false facts to the bank. The deceptive means that  
15    are prohibited are not limited to active misrepresentations or  
16    lies told to the bank. Just as affirmatively stating facts as  
17    true when the facts are not true may constitute a false  
18    representation, the law recognizes that false representations  
19    need not be based on spoken or written words alone. The  
20    deception may arise from the intentional omission or  
21    concealment of facts that make what was written, said or done  
22    deliberately misleading.

23            False representations and pretenses must be material.  
24    We use the word "material" to distinguish between the kinds of  
25    statements we care about and those that are of no real



HCK3ATI2

## Jury Charge

1 importance. So a material fact is one which reasonably would  
2 be expected to be capable of influencing a reasonable and  
3 prudent person relying on the statement in making a decision.  
4 That means that if you find a particular statement of fact to  
5 have been untruthful, before you can find that statement or  
6 omission to be material, you must also find that the statement  
7 or omission was one that would have been capable of influencing  
8 a reasonable person in making such a decision. Actual reliance  
9 by the bank on the representations is not required. It is  
10 sufficient if the misrepresentation is one that is capable of  
11 influencing the bank's decision and is intended to do so.

12 In order to establish the existence of a scheme, the  
13 government is not required to establish that the scheme  
14 actually succeeded -- that is, that a schemer realized any gain  
15 from the scheme or that the intended victim suffered any loss.  
16 The issue is whether there was such a scheme. Thus, it is not  
17 necessary for the government to prove that the scheme  
18 succeeded, just that the scheme was devised and employed.

19 If you find that the government has sustained its  
20 burden of proof that a scheme to defraud a bank or to obtain  
21 money by false pretenses did exist as charged, you next should  
22 consider the second element of bank fraud. And that is as  
23 follows:

24 To meet its burden of proof with respect to the bank  
25 fraud, the second element that the government must prove beyond

HCK3ATI2

## Jury Charge

1 a reasonable doubt is that the defendant executed, attempted to  
2 execute, or participated in the scheme, knowingly, willfully,  
3 and with specific intent to defraud the bank or to obtain money  
4 owned or possessed by the bank, or under the bank's custody or  
5 control.

6 To act with "intent to defraud" means to act willfully  
7 and with intent to deceive.

8 The government is not required to prove that the  
9 defendant intended permanently to deprive the banks of their  
10 property or that the banks suffered a loss or that the  
11 defendant personally profited by his acts. It is sufficient if  
12 the defendant intended through the scheme to defraud to obtain  
13 the use of the victim's money or property for a period of time,  
14 even if he ultimately intended to return it, or if the  
15 defendant intended to obtain the use of the victim's money or  
16 property by deliberately depriving them of information that was  
17 material to their decision on how to use or invest their money  
18 or property.

19 If you find that the defendant did not intend to  
20 deprive the banks of their property or that the bank suffered  
21 no loss or that the defendant did not profit by his acts, you  
22 may consider this evidence in determining whether the defendant  
23 had the intent to defraud the banks.

24 To "participate" in a scheme to defraud means to  
25 associate oneself with it with a view and intent to make it

HCK3ATI2

Jury Charge

1       succeed.

2               An act is done "knowingly" if it is done deliberately  
3       and purposefully. That is, a defendant's act must have been  
4       the product of his conscious objective, rather than the product  
5       of a mistake or accident or mere negligence, carelessness or  
6       recklessness or some other innocent reason.

7               And "willfully" means to act with knowledge that one's  
8       conduct is unlawful and with the intent to do something the law  
9       forbids, that is to say with a bad purpose to disobey or  
10      disregard the law.

11              "Unlawfully" means simply contrary to law. A  
12      defendant need not have known that he or she was breaking any  
13      particular law or any particular rule. A defendant need only  
14      have been aware of the generally unlawful nature of his or her  
15      acts or plans.

16              I said there were three elements of bank fraud.  
17      That's two. Here's the third:

18              To meet its burden of proof with respect to bank  
19      fraud, the third and final element that the government must  
20      also prove beyond a reasonable doubt is that the banks in  
21      question, HSBC Bank U.S.A., Deutsche Bank Trust Company  
22      Americas, UBS Bank U.S.A., BNY Mellon, Citibank, JPMorgan Chase  
23      Bank, Bank of America and Wells Fargo Bank, that is, the banks  
24      that were subject of the scheme or artifice to defraud, were,  
25      at the time of the execution or attempted execution of the

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1 fraudulent scheme, federally insured financial institutions.

2 This simply means that the banks deposits had to be insured by  
3 the United States Federal Deposit Insurance Corporation.

4 The government need not show that the defendant knew  
5 that the banks in question were federally insured to satisfy  
6 this third element.

7 So that's one count. I said there are six. I said  
8 you need patience. So, five to go.

9 So the second count is the second substantive count.  
10 After we finish the second count, we'll turn to the conspiracy  
11 counts.

12 The second substantive count is found in Count Five of  
13 the indictment and it's called money laundering. The second  
14 substantive count is money laundering. Count Five of the  
15 indictment charges the defendant with unlawfully transporting  
16 or attempting to transport funds or monetary instruments to or  
17 from the United States, with an intent to promote certain  
18 criminal offenses. And that was done in violation of 18,  
19 United States Code, Section 1956 (a)(2)(A). This crime is  
20 commonly called money laundering.

21 Title 18, United States Code, Section 1956 (a)(2)(A)  
22 provides in pertinent part as follows:

23 Whoever transports, transmits, or transfers, or  
24 attempts to transport, transmit, or transfer, a monetary  
25 instrument or funds from a place outside the United States to a

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1 place in the United States, from or through a place outside the  
2 United States, with the intent to promote the carrying on of  
3 specified unlawful activity, is guilty of an offense against  
4 the United States.

5           Apart from his alleged participation in substantive  
6 count of money laundering, as I said before, the defendant is  
7 also charged with a separate offense of a conspiracy to commit  
8 money laundering which will be discussed later on. You should  
9 bear in mind that the law relating to money laundering, that is  
10 to say, the substantive elements which I've been going over  
11 with you, those elements of money laundering discussed here  
12 also apply with regard to the conspiracy to commit money  
13 laundering also charged against the defendant.

14           In order to prove the defendant guilty of money  
15 laundering, the government must prove beyond a reasonable doubt  
16 the following two elements which I will describe in detail:

17           The first element that the government must prove  
18 beyond a reasonable doubt is that the defendant transported,  
19 transmitted or transferred, or attempted to transport, transmit  
20 or transfer, a monetary instrument or funds from a place in the  
21 United States to or through a place outside the United States  
22 or to a place in the United States from or through a place  
23 outside the United States.

24           Second, the government must prove beyond a reasonable  
25 doubt that the defendant did so with the intent to promote the

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1 carrying out of a specified unlawful activity.

2 I'm going to discuss those two elements in more  
3 detail.

4 The first element of money laundering. The first  
5 element, which the government must prove beyond a reasonable  
6 doubt, is that the defendant transported, transmitted, or  
7 transferred or attempted to transport, transmit, or transfer, a  
8 monetary instrument or funds from a place in the United States  
9 to or through a place outside the United States, or to a place  
10 in the United States from or through a place outside the United  
11 States.

12 A "monetary instrument" includes, among other things,  
13 currency or a coin of the United States, for example U.S.  
14 dollars, or any other country, travelers checks, cashiers  
15 checks, bank checks, personal checks, investment securities,  
16 and other negotiable instruments.

17 "Funds" refers to money or negotiable paper which can  
18 be converted into currency.

19 "Transport," "transmit" and "transfer" are not really  
20 words that require definition. They are words that have an  
21 ordinary, every day meaning.

22 The government need not prove that the defendant  
23 physically carried the funds or monetary instruments in order  
24 to prove that the defendant is responsible for transporting or  
25 transmitting it. All that is required is proof that the

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1 defendant caused the funds or monetary instrument to be  
2 transported, transmitted, or transferred.

3 I said there were two elements to money laundering.  
4 Here's the second one: The second element that the government  
5 must prove beyond a reasonable doubt is that the defendant  
6 acted with the intent to promote the carrying out of specified  
7 unlawful activity.

8 And I instruct you as a matter of law that the term  
9 "specified unlawful activity" includes (1) bank fraud and the  
10 conspiracy to commit bank fraud, as charged in Counts Three and  
11 Four respectively in the indictment, and (2) a conspiracy to  
12 violate the IEEPA as charged in Count Two.

13 To act knowingly and intentionally means to act  
14 deliberately and purposefully, not by mistake or accident, with  
15 a deliberate purpose of promoting, facilitating or assisting  
16 the carrying on of the specified unlawful activity, namely  
17 here, (i) bank fraud and/or bank fraud conspiracy; and (ii) a  
18 conspiracy to violate IEEPA.

19 Now there is a concept that I want to explain to you  
20 which is referred to as "aiding and abetting" the substantive  
21 offenses of bank fraud and money laundering. So this applies  
22 to the two substantive counts which I've just explained to you.

23 With respect to the substantive bank fraud charge,  
24 Count Three of the indictment, and the substantive money  
25 laundering charge, Count Five of the indictment, I need to

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1 instruct you about what is called aiding and abetting the  
2 commission of those crimes. Aiding and abetting is an  
3 alternative theory on which somebody can be convicted of a  
4 substantive crime. In other words, you may also find the  
5 defendant guilty of the bank fraud and/or the money laundering  
6 counts if you find that he aided and abetted the commission of  
7 those crimes.

8 The aiding and abetting statute is Section 2(a) of  
9 Title 18 of the United States Code, which provides that:

10 Whoever commits an offense against the United States,  
11 or aids, abets, counsel, commands, induces or procures its  
12 commission, is punishable as a principal.

13 Under the aiding and abetting statute, it is not  
14 necessary for the government to show that defendant himself  
15 personally committed the bank fraud or the money laundering  
16 with which he is charged in order for you to find him guilty.

17 A person who aids, abet, counsels, commands, induces  
18 or procures another to commit an offense is just as guilty of  
19 that offense as if he committed it himself.

20 Accordingly, you may find the defendant guilty on the  
21 substantive crimes of bank fraud or money laundering if you  
22 find beyond a reasonable doubt that the government has proved  
23 that another person actually committed the crime, and that  
24 defendant knowingly aided and abetted that person in the  
25 commission of either of those offenses.



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1           As you can see, the first requirement is that another  
2 person has in fact committed the crime charged. Obviously, no  
3 one can be convicted of aiding and abetting the criminal act of  
4 another if no crime was committed by the other person in the  
5 first place. But if you do find that a crime was committed,  
6 then you must consider whether the defendant aided or abetted  
7 the commission of that crime. And here we're talking about the  
8 two substantive offenses. In order to aid or abet another to  
9 commit a crime, it is necessary that the defendant willfully  
10 and knowingly associated himself in some way with the crime,  
11 and that he willfully and knowingly and with the specific  
12 intent required for the commission of the substantive crime  
13 seeks by some act to help make the crime succeed.

14           Participation in a crime is willful if action is taken  
15 voluntarily and intentionally and with the specific intention  
16 to do something that the law forbids, or, in the case of a  
17 failure to act, with the specific intent to fail to do  
18 something the law requires to be done; that is to say, with a  
19 bad purpose, either to disobey or to disregard the law.

20           The mere presence of the defendant where a crime is  
21 being committed, even coupled with knowledge by the defendant  
22 that a crime is being committed, or the mere acquiescence by  
23 the defendant in the criminal conduct of others, even with  
24 guilty knowledge, is not sufficient to establish aiding and  
25 abetting.

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1           An aider and abettor must have some interest in the  
2 criminal venture. You may not infer that the defendant was  
3 guilty of participating in criminal conduct merely from the  
4 fact that he associated with another person who was guilty of  
5 wrongdoing.

6           To determine whether defendant aided or abetted the  
7 commission of bank fraud or money laundering, the two  
8 substantive counts, ask yourselves these questions:

9           Did he participate in the crime charged as something  
10 he wished to bring about? Did he associate himself with the  
11 criminal venture, knowingly and willfully and with the specific  
12 intent to commit the crime? And did he seek by his actions to  
13 make the criminal venture succeed?

14           If the defendant did, then he is an aider and abettor  
15 and therefore guilty of the offense. If he did not, then he is  
16 not an aider and abettor and is not guilty of that offense.

17           I'm going to pause for a second and catch my breath  
18 before we turn to the conspiracy counts.

19           So let's turn to the conspiracy counts, they are  
20 charged in Counts One, Two, Four and Six of the indictment.  
21 There is four conspiracies charged.

22           Defendant Mr. Atilla is also charged in four  
23 conspiracy counts. He's charged in participating in  
24 conspiracies to (i) violate federal statutes that make it  
25 unlawful to defraud the United States; (ii) violate the

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1 International Emergency Economic Powers Act, IEEPA; (iii)  
2 commit bank fraud; and (iv) commit money laundering.

3 Three and four, those are the substantive counts that  
4 I addressed earlier.

5 Each of the four conspiracy counts will be discussed  
6 in some detail below. It may be helpful when you get in the  
7 jury room to read through the indictment when considering these  
8 counts. Indeed, that may help you with respect to any or all  
9 of the counts, so I encourage you to do that.

10 A conspiracy to commit a crime is an entirely separate  
11 and different offense from the substantive crime or crimes that  
12 may be the objective of the conspiracy. The essence of the  
13 crime of conspiracy is an agreement or understanding to violate  
14 the law, and thus, a conspiracy may exist even if it should  
15 fail in its purposes.

16 Consequently, in a conspiracy, there is no need to  
17 prove that the crime or crimes that were the objective of the  
18 conspiracy were actually committed. The point is that the  
19 crime or crimes that were the objectives of the conspiracy need  
20 not have been actually committed for a conspiracy to exist.  
21 So, for example, even if you do not find that the defendant  
22 committed the substantive count of bank fraud, you may still  
23 find him guilty of committing the alleged conspiracy to commit  
24 bank fraud.

25 So the first conspiracy count charges that from at

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1 least in or about 2010, up to and including in or about 2015,  
2 the defendant agreed with others to impair, impede, and  
3 obstruct the lawful and legitimate governmental functions and  
4 operations of the United States Department of Treasury.

5 And with regard to Count One, we refer to Title 18 of  
6 the United States Code, Section 371, which provides as follows:

7 If two or more persons conspire to defraud the United  
8 States, and one or more of such persons do any act to effect  
9 the object of the conspiracy, each is guilty of an offense  
10 against the United States.

11 So let's talk about the elements of this first  
12 conspiracy. There is going to be three elements.

13 To sustain its burden of proof with respect to the  
14 crime of conspiracy to defraud the United States, the  
15 government must separately prove beyond a reasonable doubt that  
16 follow the following elements:

17 First, the existence of the conspiracy charged, that  
18 is, with respect to Count One of the indictment, the existence  
19 of an agreement or understanding to impair, impede, obstruct or  
20 defeat the lawful and legitimate functions and operations of  
21 the United States Department of Treasury; and

22 Two, that the defendant knowingly and willfully became  
23 a member of that conspiracy.

24 In addition, with respect to the conspiracy charged in  
25 Count One of the indictment, the conspiracy to defraud the

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1 United States, the government must also prove beyond a  
2 reasonable doubt a third element, which is as follows:

3 Third, that some member of the conspiracy, not  
4 necessarily the defendant, knowingly committed at least one  
5 overt act in furtherance of the conspiracy during the life of  
6 the conspiracy.

7 So let's consider these three elements with respect to  
8 Count One of the indictment, that Count One conspiracy, we'll  
9 consider the three separately.

10 Element one. The existence of a conspiracy.

11 What is a conspiracy? A conspiracy is a combination,  
12 agreement, or an understanding of two or more persons to  
13 accomplish by concerted action a criminal or unlawful purpose.  
14 In the first conspiracy, the conspiracy to defraud the United  
15 States, the unlawful purpose alleged to have been the object of  
16 the conspiracy, which is charged in Count One, was to impair,  
17 impede or obstruct the lawful and legitimate governmental  
18 functions and operations of the United States Department of  
19 Treasury by deceit, craft, or trickery, or means that are  
20 dishonest.

21 The gist or essence of the crime of conspiracy is the  
22 unlawful combination or agreement to violate the law. The  
23 conspiracies alleged here are the agreements to commit certain  
24 crimes, and as I said before, they are entirely distinct and  
25 separate offenses from the actual commission of any of the

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1 alleged crimes. In order to show that a conspiracy existed,  
2 the evidence must show that two or more persons in some way or  
3 manner, through any contrivance, explicitly or implicitly, came  
4 to an understanding to violate the law and to accomplish an  
5 unlawful plan.

6 To show a conspiracy, the government is not required  
7 to show that two or more persons sat around a table and entered  
8 into a solemn pact, orally or in writing, stating that they had  
9 formed a conspiracy to violate the law and spelling out all of  
10 its details. Common sense tells you that when people in fact  
11 agree to enter a criminal conspiracy, much is left to the  
12 unexpressed understanding. It is rare that a conspiracy can be  
13 proven by direct evidence of an explicit agreement.

14 It is sufficient if two or more persons in some way or  
15 manner, formally or informally, impliedly or tacitly came to a  
16 common understanding, a common plan that will violate the law.

17 In determining whether there has been an unlawful  
18 agreement as alleged, you may consider the alleged acts and the  
19 conduct of the alleged co-conspirators that were done to carry  
20 out the criminal purpose. The adage "actions speak louder than  
21 words" applies here. Often the only evidence that is available  
22 with respect to the existence of a conspiracy is that of  
23 disconnected acts and conduct on the part of the alleged  
24 individual co-conspirators. When taken all together and  
25 considered as a whole, those acts and conduct may warrant the

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1 inference that a conspiracy existed as conclusively as would  
2 direct proof.

3           So, you must first determine whether or not the proof  
4 established beyond a reasonable doubt the existence of the  
5 conspiracies as charged in the indictment. In considering this  
6 first element, you should consider all the evidence which has  
7 been admitted with respect to the conduct and statements of  
8 each of the alleged co-conspirators, and such inferences as may  
9 reasonably be drawn from them. It is sufficient to establish  
10 the existence of the conspiracy, if, from the proof of all the  
11 relevant facts and circumstances, you find beyond a reasonable  
12 doubt that the minds of two alleged co-conspirators met in an  
13 understanding way to accomplish, by the means alleged, at least  
14 one of the unlawful objectives of the conspiracy.

15           The objects of a conspiracy are the illegal goals the  
16 co-conspirators agree or hope to achieve. Count One charges  
17 that the goal or object of the conspiracy was to impair,  
18 impede, or obstruct the lawful and legitimate governmental  
19 functions and operations of the United States Treasury in its  
20 enforcement of economic sanctions laws and regulations against  
21 Iran administered by that agency.

22           In order to find the defendant impaired, impeded, or  
23 obstructed a legitimate governmental function, you must find  
24 beyond a reasonable doubt that the object of the conspiracy was  
25 to interfere with or obstruct one of the United States' lawful

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1 government functions by deceit, craft or trickery, or by means  
2 that are dishonest. The specific intent to obstruct includes  
3 making it more difficult for the government to carry out its  
4 lawful functions and that the scheme depend on dishonest or  
5 deceitful means. Actual contact between the defendant and an  
6 official of the United States government is not an element of  
7 the crime, nor is it necessary for you to find that the  
8 government was subjected to any loss of money or property as a  
9 result of the conspiracy. It is also not necessary for you to  
10 find that the impairment violated any separate law. What is  
11 required is that the object of the conspiracy was to interfere  
12 with or obstruct one of the United States lawful governmental  
13 functions by deceit, craft or trickery, or by means that are  
14 dishonest.

15 As I will explain in more detail when we come to Count  
16 Two, the United States has imposed economic sanctions or legal  
17 restrictions on trade and transactions involving the Islamic  
18 Republic of Iran. The United States Department of Treasury  
19 administers and enforces these laws, including two offices  
20 called the Office of Foreign Assets Control, often referred to  
21 by its initials OFAC, and the Office of Terrorism and Financial  
22 Intelligence.

23 I instruct you, as a matter of law, that the  
24 administration of the economic sanctions against the Islamic  
25 Republic of Iran constitutes a legitimate function of the



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1 government of the United States.

2 Element two. Membership in the conspiracy.

3 If you conclude that the government has proven beyond  
4 a reasonable doubt that the conspiracy charged in Count One of  
5 the indictment existed, you must next determine whether the  
6 defendant has been shown beyond a reasonable doubt to have  
7 participated in the conspiracy with knowledge of its unlawful  
8 purposes and in furtherance of its unlawful objectives.

9 To satisfy its burden, the government must prove  
10 beyond a reasonable doubt that the defendant knowingly,  
11 willfully and unlawfully entered into the conspiracy, into the  
12 agreement, and that he did so with a criminal intent, that is,  
13 with a purpose to violate the law, and that he agreed to take  
14 part in the conspiracy to promote and cooperate in its unlawful  
15 objectives.

16 I've previously defined the terms "knowingly,"  
17 "willfully," and "unlawfully," and those same definitions apply  
18 here.

19 Before a defendant can be found to have been a  
20 conspirator, you must first find that he or she knowingly  
21 joined the unlawful agreement or plan. The key question is  
22 whether the defendant joined the conspiracy with an awareness  
23 of at least some of the basic aims and purposes of the unlawful  
24 agreement.

25 Knowledge is often a matter of inference from proven

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1 facts. We cannot look into a person's mind and know what that  
2 person is thinking. It is not necessary that a defendant be  
3 fully informed as to all the details of the conspiracy in order  
4 to justify an inference of guilty knowledge on his or her part.  
5 To have knowledge of the conspiracy, a defendant need not have  
6 known the full extent of the conspiracy or all of its  
7 activities or all of its participants. Nor is it necessary  
8 that a defendant know every other member of the conspiracy. In  
9 fact, a defendant may know only one other member of the  
10 conspiracy, and still be a co-conspirator. Nor is it necessary  
11 that a defendant receive any monetary benefit from  
12 participating in the conspiracy or have a financial stake in  
13 the outcome, as long as he in fact participated in the  
14 conspiracy in the manner I have explained. If you find that  
15 the defendant has a financial stake in the outcome of the  
16 alleged conspiracy, then you may consider that as a factor in  
17 deciding whether he was a member of the conspiracy.

18 For the co-conspirators to have acted with specific  
19 intent to deceive or defraud means that they must have known of  
20 the fraudulent nature of the scheme and acted with the intent  
21 that it succeed. In other words, to act with an intent to  
22 defraud means to act knowingly and with a specific intent to  
23 deceive, ordinarily, but not necessarily, for the purpose of  
24 causing some loss to another or to bring some gain to oneself.

25 It is not required that the government show that the

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1 co-conspirators, in addition to knowing what they were doing  
2 and deliberately doing it, also knew that they were violating  
3 some particular federal statute.

4 Let me say that again.

5 It is not required that the government show that the  
6 co-conspirators, in addition to knowing what they were doing  
7 and deliberately doing it, also knew that they were violating  
8 some particular federal statute. But the co-conspirators must  
9 have acted with the intent to help carry out some essential  
10 step in the execution of the scheme to defraud that is alleged  
11 in the indictment.

12 The question of a co-conspirator's intent is a  
13 question of fact that you are called upon to decide, just as  
14 you determine any other fact at issue. Intent to defraud  
15 involves the state of a person's mind, and the purpose with  
16 which he acted at the time of the acts in question and at the  
17 time they occurred. Direct proof of knowledge and fraudulent  
18 intent is almost never available, and is not required to find  
19 that such proof existed. It would be a rare case where it  
20 could be shown that a person wrote or stated that as of a given  
21 time in the past he committed an act with fraudulent intent.  
22 Such direct proof is not required.

23 The ultimate facts of knowledge and criminal intent,  
24 though subjective, may be established by circumstantial  
25 evidence based on a person's outward manifestations, his or her

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1 words, his or her conduct, his or her acts, and all the  
2 surrounding circumstances disclosed by the evidence, and the  
3 rational or logical inferences that may be drawn therefrom.  
4 Circumstantial evidence, if believed, is, as I noted before, of  
5 no less value than direct evidence.

6 Hold on.

7 Relevant in this regard may be the conduct of the  
8 persons you find to be members of the conspiracies charged,  
9 which, in light of the other evidence in the case, may tend to  
10 prove knowledge, intent, or willfulness. Thus, for example,  
11 you may consider as relevant any conduct engaged in by the  
12 co-conspirators which has the effect of concealing their  
13 activities, including false statements made to others  
14 concerning material facts or false notations and reports or  
15 other documents submitted to others concerning material facts.  
16 All are conduct from which willfulness may be inferred.

17 On the other hand, you may consider any evidence that  
18 the co-conspirators engaged in certain activities openly and  
19 without an attempt to conceal or voluntarily and honestly  
20 brought their full involvement to light as evidence of a lack  
21 of willfulness.

22 The duration and extent of a defendant's participation  
23 in a conspiracy has no bearing on the issue of defendant's  
24 guilt. A defendant need not have joined the conspiracy at the  
25 outset. A defendant may have joined it for any purpose at any

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1 time in its progress, and that defendant will still be held  
2 responsible for all that was done before that defendant joined,  
3 and all that was done during the conspiracy's existence while  
4 the defendant was a member.

5 Each member of a conspiracy may perform separate and  
6 distinct acts and may perform them at different times. Some  
7 conspirators play major roles, while others play minor roles in  
8 the scheme. An equal role is not what the law requires. In  
9 fact, even a single act may be sufficient to draw defendant  
10 within the ambit of the conspiracy.

11 However, I want to caution you that mere association  
12 by one person with one who is a conspirator does not make that  
13 person, the first person, a member of the conspiracy, even when  
14 he or she knows that a conspiracy is taking place. Mere  
15 presence at the scene of a crime, even when coupled with  
16 knowledge that a crime is taking place, is not sufficient to  
17 support a conviction of that crime. In other words, knowledge  
18 without participation is not sufficient to convict a person of  
19 conspiracy. What is required or necessary is that the  
20 defendant, the alleged conspirator, participated in the  
21 conspiracy with knowledge of its unlawful purposes, and with an  
22 intent to aid in the accomplishment of its unlawful objective.

23 In sum, the government has the burden to prove beyond  
24 a reasonable doubt that the defendant, with an understanding of  
25 the unlawful character of the conspiracy, must have

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1 intentionally engaged, advised, or assisted in them for the  
2 purpose of furthering an illegal undertaking. The government  
3 has the burden to prove beyond a reasonable doubt that the  
4 defendant thereby became a knowing and willing participant in  
5 the unlawful agreement -- that is to say, a conspirator.

6 A conspiracy, once formed, is presumed to continue  
7 until either its objective is accomplished or there is some  
8 other affirmative act of termination by its members. So, too,  
9 once a person is found to be a member of a conspiracy, that  
10 person is presumed to continue being a member in the venture  
11 until the venture is terminated, unless it is shown by some  
12 affirmative proof that the person withdrew and disassociated  
13 himself from it.

14 Element three of the first conspiracy which we're  
15 still considering. This is the third element. And with  
16 respect only to this conspiracy, that is to say the conspiracy  
17 to defraud the United States as set forth in Count One of the  
18 indictment, the government must show beyond a reasonable doubt  
19 that at least one overt act was committed in furtherance of the  
20 conspiracy to defraud the United States as set forth in Count  
21 One of the indictment by at least one of the co-conspirators,  
22 and was committed in the Southern District of New York.

23 I instruct you, as a matter of law, that Manhattan  
24 falls within the geographic boundaries of the Southern District  
25 of New York.

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1           The purpose of the overt act requirement, which  
2       applies in this first conspiracy, but not in the others --  
3       we'll get to that -- but the purpose of the overt act  
4       requirement in Count One of the indictment is that the law  
5       requires there to have been something more than mere agreement  
6       to reach a conviction of this conspiracy. There must also be  
7       some overt act or action that must have been taken by at least  
8       one of the conspirators in furtherance of the conspiracy. If  
9       you find that an overt act has been committed, you must be  
10      unanimous as to which act it was. You must find that the  
11      government has proven beyond a reasonable doubt that one of the  
12      members of the charged conspiracy, not necessarily the  
13      defendant in this case, took some step or action in furtherance  
14      of the conspiracy in the Southern District of New York at some  
15      point in time during the life of the conspiracy. In  
16      determining whether an overt act occurred within the Southern  
17      District of New York, you need not find that any co-conspirator  
18      was physically present within this district, as long as you  
19      find that some overt act in furtherance of the conspiracy  
20      occurred within the district.

21           The overt act element is a requirement that the  
22      agreement went beyond the mere talking stage, the mere  
23      agreement stage. The requirement of an overt act is a  
24      requirement that some action be taken during the life of the  
25      conspiracy by one of the co-conspirators to further the

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1 conspiracy.

2           You are further instructed that the overt act need not  
3 have been committed at precisely the time alleged in the  
4 indictment. It is sufficient if you are convinced beyond a  
5 reasonable doubt that it occurred at or about the time and  
6 place stated, as long as it occurred while the conspiracy was  
7 still in existence.

8           You should bear in mind that the overt act, standing  
9 alone, may be an innocent, lawful act. Frequently, however, an  
10 apparently innocent act loses its harmless character if it is a  
11 step in carrying out, promoting, aiding or assisting the  
12 conspiratorial scheme.

13           Let's talk a minute about the time of a conspiracy.  
14 The indictment charges that the conspiracy charged in Count  
15 One, and, for that matter, Counts Two, Four and Six, and all  
16 the conspiracies, occurred from at least in or about 2010, up  
17 to and including in or about 2015. It is not essential that  
18 the government prove that the conspiracies started and ended on  
19 those specific dates. Indeed, it is sufficient if you find  
20 that in fact the charged conspiracies were formed and that they  
21 existed for some time within the period set forth in the  
22 indictment, and with respect to Count One, that at least one  
23 overt act occurred in the conspiracy to defraud the United  
24 States, and that it was committed in furtherance of the charged  
25 conspiracy within that time period.



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Jury Charge

1 One down in the conspiracy area. Now I'm turning to  
2 the second conspiracy alleged in the indictment.

3 This is called a conspiracy to violate a license,  
4 order, regulation, or prohibition pursuant to the International  
5 Emergency Economic Powers Act, IEEPA. And it is set forth in  
6 Count Two of the indictment.

7 Count Two of the indictment charges the defendant with  
8 participating in a conspiracy from at least in or about 2010 up  
9 to and including in or about 2015 to violate a license, order,  
10 regulation, or prohibition issued pursuant to the International  
11 Emergency Economic Powers Act, otherwise known as IEEPA.

12 Under the authority of IEEPA, among other things, the  
13 United States has adopted certain restrictions called economic  
14 sanctions on transactions with or involving the Islamic  
15 Republic of Iran. Among other things, these sanctions prohibit  
16 causing the export of a service directly or indirectly to Iran  
17 or the government of Iran from the United States or by a United  
18 States person. In addition, during the relevant time period,  
19 the sanctions allowed penalties against foreign financial  
20 institutions with bank accounts in the United States if those  
21 foreign financial institutions violated certain rules on  
22 assisting transactions with or for the benefit of Iran.

23 I've already instructed you as to what a conspiracy is  
24 and how you should go about determining whether one existed and  
25 whether the defendant knowingly joined and participated in it,

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Jury Charge

1 and those same principles apply to Count Two as they did to  
2 Count One. However, no overt act is required for this second  
3 conspiracy count. One was required for the first conspiracy.  
4 It is not required not second conspiracy.

5 As I've stated, the object of the conspiracy charged  
6 in Count Two is the violation of IEEPA. A violation of IEEPA  
7 has itself the following elements:

8 First, the violation of any license, order,  
9 regulation, or prohibition issued pursuant to IEEPA; and

10 Second, the violation was committed willfully; and

11 Third, that the Office of Foreign Assets Control,  
12 OFAC, had not issued a license to engage in the charged  
13 transactions.

14 As I've mentioned, you need not find that a  
15 substantive violation of the IEEPA actually occurred, only that  
16 the defendant knowingly and willfully participated in a  
17 conspiracy to engage in conduct that would have violated IEEPA.

18 Let's talk a minute about license, order, regulation,  
19 and prohibitions. In order to prove that the defendant  
20 conspired to commit an IEEPA offense, the government must prove  
21 that defendant agreed with others to violate a license, order,  
22 regulation or prohibition issued pursuant to IEEPA. I instruct  
23 you that the following orders, regulations, and prohibitions  
24 were in effect at all times relevant to Count Two:

25 First, orders, regulations, or prohibitions issued

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Jury Charge

1 pursuant to IEEPA provided that the exportation, reexportation,  
2 sale or supply, directly or indirectly, from the United States  
3 or by a United States person, wherever located, of any goods,  
4 technology or services to Iran, or the government of Iran, is  
5 prohibited unless the transaction was for the export of  
6 agricultural commodities, medicine and medical devices or was  
7 authorized by a license from OFAC. In this regard, I instruct  
8 you that the execution of dollar denominated money transfers  
9 from the United States on behalf of another, whether or not  
10 performed for a fee, constitutes the exportation of a service.  
11 Services may be provided indirectly, for example, if funds are  
12 transferred to Iran on or behalf of an Iranian person or  
13 business through an intermediary, or if they are transferred to  
14 a third party for the benefit of, or on behalf of, the  
15 government of Iran, or if they are transferred to a third party  
16 acting as an agent of the government of Iran.

17 The government of Iran means the state and the  
18 government of the Islamic Republic of Iran as well as any  
19 political subdivision, agency, or instrumentality of the  
20 government of the Islamic Republic of Iran, including the  
21 Central Bank of Iran, and the National Iranian Oil Company,  
22 also referred to as NIOC. The government of Iran also includes  
23 any entity or business owned or controlled directly or  
24 indirectly by the government of Iran, and any person acting or  
25 purporting to act directly or indirectly for or on behalf of

HCK3ATI2

Jury Charge

1 the government of the Iran.

2 I was instructing you that the following orders,  
3 regulations and prohibitions were in effect at the times  
4 relevant to this Count Two, and that was the first set of  
5 orders, regulations, or prohibitions that were in effect.

6 The second set of orders, regulations, or prohibitions  
7 issued pursuant to IEEPA prohibited any transaction that evades  
8 or avoids, has the purpose of evading or avoiding, causes a  
9 violation of or attempts to violate, any of the prohibitions  
10 I've just described as well as any conspiracy formed to violate  
11 those prohibitions.

12 And third, it includes orders, regulations or  
13 prohibitions issued pursuant to the IEEPA required the U.S.  
14 Secretary of the Treasury to prohibit a foreign financial  
15 institution's use of correspondent banking accounts or  
16 so-called payable-through bank accounts in the United States,  
17 or to impose strict conditions on the use of correspondent  
18 banking accounts or payable-through accounts in the United  
19 States, if the foreign financial institution knowingly  
20 conducted or facilitated certain types of financial  
21 transactions with Iran, or for the benefit of the government of  
22 Iran.

23 Beginning on July 31, 2012, the U.S. Secretary of the  
24 Treasury was required to impose sanctions against any person if  
25 there was a determination that the person materially assisted,

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Jury Charge

1 sponsored or provided financial, material or technological  
2 support for or goods or services in support of NIOC, the  
3 National Iranian Oil Company, NICO, Naftiran Intertrade  
4 Company, or the Central Bank of Iran, or the purchase or  
5 acquisition of United States bank notes or precious metals by  
6 the government of Iran.

7 And beginning on or about February 6, 2013, the U.S.  
8 Secretary of Treasury was required to impose sanctions against  
9 foreign financial institutions if the foreign financial  
10 institutions knowingly conducted or facilitated any financial  
11 transaction with respect to the sale or purchase of petroleum  
12 or petroleum products to or from Iran, unless the funds were  
13 used only for bilateral trade between the foreign country and  
14 Iran with any funds owed to Iran deposited in an account within  
15 that foreign country, and unless the transaction was for the  
16 export of agricultural commodities, medicine or medical  
17 devices.

18 Then beginning on July 1, 2013, the United States  
19 Secretary of the Treasury was required to impose sanctions  
20 against any person if there were a determination that the  
21 person who sold, supplied or transferred, directly or  
22 indirectly, precious metals directly or indirectly to or from  
23 Iran.

24 We're still under the category I was giving you  
25 instances of licenses, orders, regulations, etc. There is a

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Jury Charge

1 fourth category that includes any transaction which avoided,  
2 had the purpose of avoiding, caused a violation of, or  
3 attempted to violate any of the prohibitions that I have  
4 already described, or any conspiracy formed to violate any of  
5 the prohibitions, was prohibited.

6 Under this last or this fourth provision or category,  
7 the government must establish that the conspirators agreed to  
8 engage in transactions for the purpose of avoiding the  
9 prohibition. It is not necessary for the government to prove  
10 that the conspirators' only reason for agreeing to engage in  
11 the transaction was to avoid the prohibition. It is sufficient  
12 if it was a dominant reason for the conspirators to have agreed  
13 to engage in the transaction. By the same token, it is not  
14 necessary for the foreign financial institutions to have been  
15 sanctioned before the conspirators agreed to engage in the  
16 transaction for the purpose of evading or avoiding the  
17 prohibitions that could result in the imposition of sanctions.  
18 It is sufficient if the conspirators believed that the  
19 sanctions could be imposed, and acted in that belief in  
20 agreeing to engage in a transaction or transactions designed to  
21 avoid the imposition of those sanctions. In other words,  
22 avoiding the imposition of sanctions by unlawfully concealing  
23 the true nature of a transaction would violate the prohibition  
24 on evading or avoiding the prohibition.

25 The second element of an IEEPA violation is that the

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Jury Charge

1 defendant acted willfully. A defendant acts willfully if he  
2 acted intentionally and purposefully with the intent to do  
3 something the law forbids, that is, with bad purpose to disobey  
4 or to disregard the law. And here, it would be to violate the  
5 U.S. embargo on certain transactions with Iran. However, the  
6 government does not need to prove that the defendant was aware  
7 of the specific law or rule that his conduct would violate.  
8 The defendant does not have to know that his conduct would  
9 violate a particular law, executive order or federal  
10 regulation, but he must act with the bad purpose to disobey or  
11 disregard the law.

12 And the third element that the government must prove  
13 to establish the IEEPA conspiracy is that at the time of the  
14 transactions at issue, the defendant had not obtained a license  
15 to conduct such transactions from the Department of Treasury's  
16 Office of Foreign Assets Control, or OFAC.

17 With regard to this, I've said it before, but with  
18 regard to this second conspiracy, no overt act is required. So  
19 unlike the case of the Count One conspiracy, where, as I said,  
20 an overt act must be proven, it is not necessary for the  
21 government to prove the commission of any overt act in  
22 furtherance of the conspiracy to violate IEEPA set forth in  
23 Count Two, as long as the government proves that the conspiracy  
24 charged in Count Two existed, and that the defendant was a  
25 knowing and intentional member of that conspiracy.

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Jury Charge

1           A defendant's conduct -- we're talking now about the  
2           IEEPA conspiracy -- is not willful if it was the result of a  
3           good-faith understanding that he was acting within the  
4           requirements of the law. A defendant may not be held liable  
5           for a violation of IEEPA if the defendant acted, or chose not  
6           to act, in a good-faith belief that he was complying with the  
7           licenses, orders, regulations, or prohibitions issued pursuant  
8           to IEEPA.

9           In other words, if you find that the defendant acted  
10          in good faith, then he may not be convicted of a conspiracy to  
11          violate IEEPA.

12          We move along to the next conspiracy, next two  
13          conspiracies, the bank fraud conspiracy and the money  
14          laundering conspiracy.

15          The bank fraud conspiracy is set forth in Count Four  
16          of the indictment. Count Four of the indictment charges the  
17          defendant with participating in a conspiracy to commit bank  
18          fraud. In summary, Count Four charges that from at least in or  
19          about 2010, up to and including in or about 2015, the defendant  
20          agreed with others to execute a scheme to defraud a United  
21          States financial institution, namely HSBC Bank U.S.A., Deutsche  
22          Bank Trust Company Americas, UBS Bank U.S.A., BNY Mellon,  
23          Citibank, JPMorgan Chase Bank, Bank of America, and Wells Fargo  
24          Bank.

25          I've already instructed you as to what a conspiracy is



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Jury Charge

1 and how you should go about determining whether one existed and  
2 whether the defendant knowingly joined and participated in it.  
3 Those same principles apply to Count Four as they did to Counts  
4 One and Two. And it is not necessary in a bank fraud  
5 conspiracy for the government to prove an overt act was  
6 committed.

7 The object of the conspiracy charged in Count Four is  
8 bank fraud in violation, as we've discussed, of Title 18,  
9 United States Code, Section 1344, and I've already explained to  
10 you the elements of bank fraud when we discussed Count Three at  
11 the beginning. You should rely on those instructions in  
12 connection with Count Four, the conspiracy to commit bank fraud  
13 as well.

14 And now moving to money laundering conspiracy, which  
15 is Count Six of the indictment. I'll turn to the money  
16 laundering conspiracy charged in Count Six. I've already  
17 instructed you as to what a conspiracy is and how you should go  
18 about determining whether one existed and whether the defendant  
19 knowingly joined and participated in it. Those same principles  
20 apply to Count Six. It is not necessary in a money laundering  
21 conspiracy for the government to prove an overt act was  
22 committed.

23 The object of the conspiracy charged in Count Six is  
24 money laundering in violation of Title 18, United States Code,  
25 Section 1956 (a)(2)(A), and I've already explained the elements

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Jury Charge

1 of money laundering to you when discussing Count Five at the  
2 beginning of these instructions. It was actually the second  
3 count that we talked about. You should rely on those  
4 instructions in connection with Count Six as well.

5 I remind you that the crime of conspiracy to violate  
6 federal law is an independent offense. It is separate from the  
7 actual violation of any specific federal laws. You may find  
8 defendant guilty of the crime of conspiracy to commit money  
9 laundering, even if you find that the money laundering itself  
10 that was an object of the conspiracy was not actually  
11 committed.

12 Now we're going to talk about something called  
13 conscious avoidance.

14 So this relates to the conspiracy counts, the four  
15 conspiracy counts that I've talked to you about, and the  
16 concept of knowledge. I need to say one more thing about that  
17 concept of knowledge.

18 In determining whether the defendant acted with the  
19 necessary knowledge, you may consider whether the defendant  
20 deliberately closed his eyes to what otherwise would have been  
21 clear. I've told you before that acts done knowingly must be a  
22 product of a defendant's conscious intention, not the product  
23 of carelessness or negligence, for example.

24 A person, however, cannot willfully blind himself to  
25 what is obvious and disregard what is plainly before him. A

HCK3ATI2

Jury Charge

1 person may not intentionally remain ignorant of facts that are  
2 material and important to his conduct in order to escape the  
3 consequences of the criminal law.

4 If you find beyond a reasonable doubt that the  
5 defendant intentionally participated in a conspiracy, but that  
6 the defendant deliberately and consciously avoided learning or  
7 confirming certain facts about the specific objectives of the  
8 conspiracy, then you may infer from his willful and deliberate  
9 avoidance of knowledge that the defendant understood the  
10 objectives or goals of the conspiracy.

11 We refer to this notion of blinding yourself to what  
12 is staring you in the face as "conscious avoidance." An  
13 argument of conscious avoidance, however, is not a substitute  
14 for proof. It is simply another fact you may consider in  
15 deciding what the defendant knew.

16 There is a difference between knowingly participating  
17 in a conspiracy, on the one hand, and knowing the object or  
18 objects or the purpose or purposes of the conspiracy on the  
19 other. Conscious avoidance cannot be used as a substitute for  
20 finding that the defendant knowingly joined the conspiracy,  
21 that is, that the defendant knew that he was becoming a party  
22 to an agreement to accomplish an alleged illegal purpose. It  
23 is in fact logically impossible for a defendant to join a  
24 conspiracy unless he knows the conspiracy exists. The  
25 defendant must know that the conspiracy is there.

HCK3ATI2

## Jury Charge

1           However, in deciding whether the defendant knew the  
2 objectives of the conspiracy, you may consider whether the  
3 defendant was aware of a high probability that an objective of  
4 the conspiracy was to commit the crime or crimes charged in the  
5 object of the conspiracy, and nevertheless participated in the  
6 conspiracy. You must judge from all of the circumstances and  
7 all of the proof whether the government did or did not satisfy  
8 its burden of proof beyond a reasonable doubt.

9           So, in other words, if you find that the defendant was  
10 aware of a high probability that a fact was so, and that the  
11 defendant acted with deliberate disregard of the facts, you may  
12 find that the defendant acted knowingly. However, if you find  
13 that the defendant actually believed the fact was not so, then  
14 he may not have acted knowingly with respect to whatever charge  
15 you are considering.

16           So those are the six crimes or charges alleged in the  
17 indictment.

18           We have some more general instructions and we're  
19 almost there.

20           As I noted at the beginning, the defendant is charged  
21 in six counts in the indictment. Each count charges the  
22 defendant with a different crime. You must consider each count  
23 of the indictment separately, and you must return a separate  
24 verdict on each count. The case on each count stands or falls  
25 upon the proof or lack of proof on that count. Your verdict on

HCK3ATI2

## Jury Charge

1 any count should not control your decision on any other count.

2 In addition to all of the elements that I've been  
3 describing to you as elements of the various crimes we've been  
4 talking about, alleged crimes, with respect to each count  
5 charged in the indictment, you must consider the issue of  
6 venue, namely, whether any act in furtherance of the unlawful  
7 activity occurred within the Southern District of New York. As  
8 I said before, the Southern District of New York includes  
9 Manhattan.

10 If the crime charged was committed in more than one  
11 district, venue is proper in any district in which the crime  
12 was begun, continued or completed. And thus, venue will lie in  
13 the Southern District of New York if you find that any part of  
14 the crime took place here.

15 The government's burden of proof with respect to  
16 establishing venue under each count of the indictment is by  
17 what we call a preponderance of the evidence. With respect to  
18 venue, it's not proof beyond a reasonable doubt, it is by  
19 preponderance of the evidence. To prove something by a  
20 preponderance of the evidence means to prove that something is  
21 more likely true than not true. This only applies to venue.  
22 It is determined by considering all the evidence and deciding  
23 which evidence is more convincing. If the evidence appears to  
24 be equally balanced or if you cannot say on which side it  
25 weighs heavier, you decide the issue of venue against the

HCK3ATI2

Jury Charge

1 government. If you find that venue has not been proven, then  
2 you must find the defendant not guilty as to that particular  
3 count.

4 Your verdict must be based solely on the evidence  
5 presented in this courtroom in accordance with my instructions.  
6 You must disregard completely any report that you may have read  
7 in the press, seen on TV or on the internet, or heard on the  
8 radio, assuming there were any. Indeed, it would be unfair to  
9 consider such reports since they are not evidence, and the  
10 parties have no opportunity to contradict their accuracy or  
11 otherwise address them. In short, it would be a violation of  
12 your oath as jurors to allow yourselves to be influenced in any  
13 manner by such publicity.

14 You've heard evidence during the trial that witnesses  
15 have discussed the facts of the case and their testimony with  
16 the lawyers before the witnesses appeared in court. Although  
17 you may consider that fact when you are evaluating a witness's  
18 credibility, you should keep in mind that there is nothing  
19 either unusual or improper about a witness meeting with lawyers  
20 before testifying so that the witness can be aware of the  
21 subjects he or she will be questioned about, focus on those  
22 subjects, and have the opportunity to review relevant exhibits  
23 before being questioned about them. Such consultation helps  
24 conserve your time and the Court's time. And in fact, it would  
25 be unusual for a lawyer to call a witness without having such a

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Jury Charge

1 consultation beforehand.

2 Again, the weight you give to the fact or the nature  
3 of the witness's preparation for his or her testimony and what  
4 inferences you draw from such preparation are matters  
5 completely within your discretion.

6 In this case you've heard evidence in the form of  
7 stipulations of testimony. A stipulation of testimony is an  
8 agreement among the parties that, if called as a witness, the  
9 person would have given certain testimony. You must accept as  
10 true the fact that the witness would have given that testimony.  
11 However, it is for you, the jurors, to determine the effect to  
12 be given that testimony.

13 Recordings of conversations and transcripts of those  
14 recordings have been admitted into evidence in this case. In  
15 connection with these recordings, you heard testimony that  
16 parts, if not all of the conversations, were in Turkish. For  
17 that reason, it was necessary to obtain translations of those  
18 conversations into English. These transcripts were admitted  
19 into evidence. Remember that the jury is the ultimate fact  
20 finder, and as with all of the evidence, you may give the  
21 transcripts such weight, if any, as you believe they deserve.

22 The defendant in a criminal case never has any duty to  
23 testify or come forward with any evidence. This is because, as  
24 I've told you, the burden of proof beyond a reasonable doubt  
25 remains with the government at all times, and the defendant is

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## Jury Charge

1 presumed innocent. In this case, the defendant did testify,  
2 and he was subject to cross-examination like other witnesses.  
3 You should examine and evaluate the testimony of the defendant  
4 just as you would the testimony of any witness.

5 In determining whether the government has proven the  
6 charges beyond a reasonable doubt, you should not consider the  
7 question of possible punishment in the event you were to find  
8 the defendant guilty of one or more of the counts. Under our  
9 system, sentencing or punishment is exclusively the function of  
10 the Court, it is not your concern, and you should not give any  
11 consideration to that issue in determining what your verdict  
12 will be.

13 Let's talk about charts, summaries, and drawings for a  
14 moment. Some charts, summaries, and drawings were shown to you  
15 to make the other evidence more meaningful and to aid you in  
16 considering that evidence. They are no better than the  
17 testimony or the documents upon which they are based, and are  
18 not themselves independent evidence. Therefore, you are to  
19 give no greater consideration to these charts, summaries or  
20 drawings than you would give to the evidence upon which they  
21 are based.

22 It is for you to decide whether the charts, summaries  
23 or drawings correctly present the information in the testimony  
24 or the documents on which they were based. You're entitled to  
25 consider the charts, summaries and drawings if you find that



HCK3ATI2

## Jury Charge

1 they are of assistance to you in analyzing the evidence and  
2 understanding the evidence.

3 You've heard testimony about evidence that was seized  
4 in various searches. Evidence obtained from these searches was  
5 properly admitted in this case and may be properly considered  
6 by you. Whether you approve or disapprove of how it was  
7 obtained should not enter into your deliberations, because I  
8 now instruct you that the government's and the defense's use of  
9 this evidence is entirely lawful.

10 Under your oath as jurors, you are not to be swayed by  
11 sympathy. You are to be guided solely by the evidence in the  
12 case and the crucial question that you must ask yourselves as  
13 you sift through this evidence is has the government proven its  
14 case beyond a reasonable doubt. You are to determine this  
15 solely on the basis of the evidence and subject to the law as I  
16 have charged you.

17 You've heard the testimony of various members or past  
18 members of law enforcement. The fact that a witness may be or  
19 was employed by the government as a law enforcement official or  
20 employee does not mean that his or her testimony is necessarily  
21 deserving of more or less consideration or greater or lesser  
22 weight than that of an ordinary witness. At the same time, it  
23 is quite legitimate for counsel to try to attack the  
24 credibility of a law enforcement witness on the grounds that  
25 his or her testimony may be colored by a personal or

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## Jury Charge

1 professional interest in the outcome of the case.

2 It is your decision, after reviewing all of the  
3 evidence, whether to accept the testimony of the law  
4 enforcement or government employee witnesses, as it is with  
5 every other type of witness, and to give to that testimony the  
6 weight you find it deserves.

7 So now, ladies and gentlemen, you're about to go into  
8 the jury room and begin your deliberations. All of the  
9 evidence and exhibits will be given to you at the start of  
10 deliberations.

11 If you want any of the testimony read back or  
12 recording of an exhibit played, you may request that also. But  
13 please remember that if you do ask for testimony, the reporter  
14 must search through his or her notes, the court reporter, and  
15 the lawyers must agree on what portions of testimony may be  
16 called for. And if they disagree, then I must resolve those  
17 disagreements. That can be a time-consuming process. So  
18 please try to be as specific as you possibly can in requesting  
19 portions of the testimony, if in fact you do.

20 Your request for testimony, and in fact any  
21 communication with the Court, should be made to me in writing,  
22 and signed by your foreperson -- I'm going to come back to the  
23 foreperson in a minute -- and given to one of the marshals  
24 outside the jury room.

25 In any event, do not tell me or anyone else how the

HCK3ATI2

## Jury Charge

1 jury stands on any issue until after a verdict is reached.

2 Many of you have taken notes during parts of the  
3 trial. Please recall my earlier instruction regarding note  
4 taking. It is entirely appropriate. Notes can be useful to  
5 focus a note taker's attention and may aid the recollection of  
6 the note taker, but they are not evidence. Notes should be  
7 used solely to refresh the note taker's recollection of the  
8 testimony, and are not a substitute for the transcript of the  
9 testimony which has been taken down verbatim by the court  
10 reporter.

11 And please remember that if notes were taken of the  
12 lawyers' arguments, the lawyers' arguments are not evidence.

13 The government, to prevail, must prove the essential  
14 elements of any crime charged beyond a reasonable doubt as has  
15 been explained in these instructions. If it succeeds, your  
16 verdict should be guilty. If it fails, your verdict should be  
17 not guilty.

18 A verdict must be unanimous. Your verdict must  
19 represent the considered judgment of each juror; whether your  
20 verdict is guilty or not guilty, it must be unanimous.

21 Your function is to weigh the evidence in the case and  
22 determine whether the defendant is guilty or not guilty solely  
23 upon the basis of such evidence. Each juror is entitled to his  
24 or her opinion. Each should, however, exchange views with his  
25 or her fellow jurors. That is the very purpose of jury

HCK3ATI2

## Jury Charge

1 deliberations -- to discuss and consider the evidence, to  
2 listen to the arguments of fellow jurors, to present your  
3 individual views, to consult with one another, and to reach an  
4 agreement based solely and entirely on the evidence, if you can  
5 do so without surrendering your own individual judgment.

6 Each of you must decide the case for yourself, after  
7 consideration with your fellow jurors of the evidence in the  
8 case. But you should not hesitate to change an opinion that,  
9 after discussion with your fellow jurors, appears incorrect.  
10 If, after carefully considering the evidence and arguments of  
11 your fellow jurors, you hold a conscientious view that differs  
12 from the others, you are not required to change your position  
13 simply because you are outnumbered. Your final vote must  
14 reflect your conscientious belief as to how the issues should  
15 be decided.

16 I said a minute ago we'd come back to the foreperson  
17 and now let me talk about that. When you get into the jury  
18 room, before you begin your deliberations, I request that you  
19 select someone to be the foreperson. Your foreperson will  
20 preside over the deliberations and speak for you all in open  
21 court. The foreperson has no greater voice or authority than  
22 any other juror. The foreperson will send out and sign any  
23 notes, and when the jury has reached a verdict, he or she will  
24 notify the marshal that the jury has reached a verdict.

25 I'm going to give you a verdict sheet form to be

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## Jury Charge

1 filled in by the jury and signed by each juror when you're  
2 finished. The purpose of the questions on the form is to help  
3 us, that is to say, counsel and myself, to understand what your  
4 findings are. I will hand this form to Christine who will give  
5 it to you so that you may record the decision of the jury with  
6 respect to each count in each question.

7 The order of the questions corresponds to the order  
8 that the six counts were described to you in these  
9 instructions.

10 No inference is to be drawn from the way the questions  
11 are worded as to what the answer should be. The questions are  
12 not to be taken as any indication that I have any opinion as to  
13 how they should be answered. I have no such opinion. And even  
14 if I did, it would be not be binding on you, the jury.

15 Before the jury attempts to answer any question, you  
16 should read all the questions on the verdict form and make sure  
17 that everybody understands each question.

18 Before you answer the questions, you should deliberate  
19 in the jury room and discuss the evidence that relates to the  
20 questions that you must answer. And when you've considered the  
21 questions thoroughly, and the evidence that relates to those  
22 questions, record the answers to the questions on the form that  
23 I will give you. Remember, all answers must be unanimous.

24 So I'm almost finished with these charges and my  
25 instructions to you. And I thank you once again for your

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Jury Charge

1 patience and attentiveness over these past three-plus weeks.

2 And now, finally, I say this not because I think it is  
3 necessary, but because it is the tradition of this court. I'll  
4 remind the jurors to be polite and respectful to each other, as  
5 I'm sure you will be, in the course of your deliberations and  
6 so that each juror may have his or her position made clear to  
7 all the others.

8 I also remind you once again that your oath is to  
9 decide without fear or favor and to decide the issues based  
10 solely on the evidence and my instructions on the law.

11 So I thank you very much. I ask you to just remain  
12 seated for a minute or two while I talk to the lawyers briefly.

13 (At the sidebar)

14 THE COURT: Does either side have any objection to the  
15 way the instructions were read as opposed to the content of the  
16 instructions?

17 MS. FLEMING: No, your Honor.

18 MR. DENTON: No, your Honor.

19 THE COURT: Have you all collected the exhibits?

20 MR. ROCCO: Yes.

21 THE COURT: Great.

22 (In open court)

23 THE COURT: Will the marshal please step forward.

24 THE DEPUTY CLERK: Sir, if you can raise your right  
25 hand, please.

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1 Do you solemnly swear that you will keep the jurors  
2 impaneled and sworn in this cause together in some private and  
3 convenient place, that you shall suffer no one to speak to  
4 them, nor shall you speak to them yourself without direction of  
5 this Court, unless it is to ask them if they have agreed upon a  
6 verdict, so help you God?

7 THE MARSHAL: I do.

8 THE COURT: At this point I'm going to ask the first  
9 12 of you, that is to say everybody in the first row, everybody  
10 in the second row, and the two of you in the third row, to go  
11 with the marshal to the jury room.

12 (Jury begins deliberations. Time noted 12:35 p.m.)

13 THE COURT: So you two jurors, as to whom we are very  
14 grateful, turn out to be our alternates. And we thank you for  
15 your patience and your participation.

16 We usually, and I am in this instance as well, not  
17 going to discharge you as jurors. We're going to let you go  
18 home, but we're not going to discharge you until the jury has  
19 finished and reached a verdict. It does occur on occasion that  
20 one of the jurors can't function as a juror for whatever  
21 reason, and that we may nevertheless call on one of you or both  
22 as alternates.

23 So we will thank you again, and we'll call you when  
24 the jury has reached a verdict or in the event that there is a  
25 need for your service back down here, if that's okay with you.

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Deliberations

1 Thanks again.

2 (Alternate jurors excused)

3 THE COURT: It's 12:35. We ordered lunch for the  
4 jury. And if you would just leave how we can contact the  
5 lawyers in case we get a note or hear from the jury. Christine  
6 will call you or somebody will. So we probably have your  
7 contact information or no?

8 MR. KAMARAJU: We'll give it to Christine again just  
9 to make sure.

10 THE COURT: What about the defense?

11 MR. ROCCO: Same, your Honor.

12 THE COURT: Cell phone or whatever.

13 MS. FLEMING: I have a contact sheet with everybody's  
14 information. I'll give it to Christine.

15 THE COURT: Thanks so much everybody.

16 MS. FLEMING: Thank you, your Honor.

17 MR. KAMARAJU: Thank you, your Honor.

18 (Recess pending verdict)

19 (In open court; jury not present)

20 THE COURT: So, what I thought I would do is call in  
21 the jury and tell them that we usually end at 4:45 and to come  
22 back tomorrow at 9:15. So that's essentially my plan.

23 We got a note early, unsigned, but it is from the jury  
24 asking for supplies. I'll read it to you. It just says:  
25 Could we have need glasses seat one -- I think somebody left a



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Deliberations

1 pair of eyeglasses -- two, highlighters; three, Post-its; four,  
2 pens; five, coffee, tea, milk and hot water.

3 That's it. Unsigned. So, if that's okay with you,  
4 that's what I'm going to do.

5 MR. LOCKARD: Yes, your Honor.

6 MS. FLEMING: We just took boxes of it out of here.

7 THE COURT: Of supplies you mean?

8 MS. FLEMING: We could have given it to them.

9 (Jury present. Time noted 4:40 p.m.)

10 THE COURT: I just wanted to mention to you our  
11 typical practice is to conclude each day at 4:45, trial or  
12 deliberations, if that's okay with you. And to remind you of  
13 my instructions that apply, continue to apply.

14 As far as deliberations are concerned, they should  
15 only occur in the jury room when all 12 of you are together.  
16 So, and if you would either tonight before you leave, if you  
17 could send me a note indicating who the foreperson is, if one  
18 has been selected, and then you're free to go.

19 So see you tomorrow morning at 9:15. Once all of you  
20 are assembled, you can start deliberating again. Okay? Great.  
21 Nice to see you.

22 (Jury excused; time noted 4:45 p.m.)

23 THE COURT: Thanks a lot.

24 MR. KAMARAJU: You don't want to see us tomorrow  
25 morning? We'll just wait for the jury.

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Deliberations

1 THE COURT: You can sleep in tomorrow.

2 MS. FLEMING: You don't want us here at 6?

3 THE COURT: Did you notice the progression? I'm an  
4 early riser. Anyway I'll see you tomorrow, 9:15 is fine.

5 MS. FLEMING: Thanks, Judge.

6 (Pause)

7 (At 4:50, a note was received from the jury)

8 (In open court; jury and defendant not present)

9 THE COURT: I do have a note, but I guess nobody's  
10 here.

11 MS. FLEMING: Judge, we have to waive Mr. Atilla's  
12 presence, which we are.

13 THE COURT: Okay. I don't think it is of much  
14 consequence. But, if he wanted to be here, that would be fine.

15 I was hoping actually that the audience would be here,  
16 because I was going to start by saying that, you know, my rule  
17 about the jury should not be contacted by anybody, and they  
18 should report to me or Christine if they are, that's a two-way  
19 street. That means that the people in the audience need to  
20 stay away from the jurors as well, including not peeking in the  
21 jury room, quite literally.

22 So I'll probably say it again tomorrow. I mean, it's  
23 good for you to hear it, but it's really for them that it was  
24 intended.

25 So, now as to the note: Hi, Judge Berman. Here are

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Deliberations

1 some requests for tomorrow.

2 I think they're pretty straightforward, but there is  
3 one I'm not sure of and you'll have to tell me.

4 One, photo poster boards, of which there were I think  
5 some. But anyway you'll have to think about it and talk before  
6 I respond tomorrow.

7 Two, Zarrab's flow charts. Three, arrest video, looks  
8 like DVD, and then it says I am the foreperson and it's Juror  
9 Number 12.

10 You had a bet?

11 MR. ROCCO: She's formidable. I was watching her  
12 during the trial --

13 THE COURT: No. I thought you had a bet among  
14 yourselves.

15 MR. ROCCO: I lost and so did Ms. Fleming.

16 THE COURT: Okay. I'm just being in the "Hi, Judge  
17 Berman" mode.

18 So would you please then come a little early, say  
19 9 o'clock, and talk before that, that is to say the government  
20 and the defense, about how to respond to this. But one  
21 question I have is, is the arrest video in the jury room  
22 already?

23 MR. KAMARAJU: Yes.

24 THE COURT: Do they have a capability in there of  
25 playing it? I don't know.

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Deliberations

1 MR. KAMARAJU: Yes.

2 THE COURT: They do?

3 MR. KAMARAJU: I think they have a laptop.

4 THE COURT: Okay. So if that's the case, then part of  
5 the note will be do you know you have it and do you have the  
6 capability of playing it.

7 MR. KAMARAJU: We can identify the exhibit number  
8 specifically for them so they can pull it out easily.

9 THE COURT: Okay. And the other two things I'll leave  
10 you to figure out what they are, and then we'll send them back  
11 tomorrow morning.

12 Okay. Good to see you. See you tomorrow.

13 (Adjourned until December 21, 2017, at 9 a.m.) 89

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